IRS PROCEDURES AND OPERATIONS IN ALASKA

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

SPECIAL HEARING

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Nondepartmental Witnesses

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IRS PROCEDURES AND OPERATIONS IN ALASKA

TUESDAY, AUGUST 4, 1981

U.S. Senate,
Subcommittee on Treasury, Postal
Service, and General Government,
Committee on Appropriations,
Anchorage, Alaska.

The subcommittee met at 8 a.m., in room C–117, Federal Court Building, Anchorage, Alaska, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor and Stevens; also present: Senator Murkowski.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE SERVICE

ACCOMPANIED BY:

PHILIP E. COATES, ASSISTANT COMMISSIONER FOR COMPLIANCE, POLICY AND PROGRAM DIRECTION FOR SERVICES COLLECTION, EXAMINATION AND CRIMINAL INVESTIGATION DIVISION

THOMAS CARDOZA, REGIONAL COMMISSIONER FOR WESTERN REGION, STATE OF ALASKA

JOHN CARLSON, DISTRICT DIRECTOR, ANCHORAGE DISTRICT

SUBCOMMITTEE PROCEDURE

Senator ABDNOR. Good morning, ladies and gentlemen. We call the subcommittee to order.

Needless to say, we are happy to be in this lovely State today and we thank you all for joining us for the hearings we'll be conducting here and in Fairbanks later in the week.

This morning we will hear public witnesses dealing with the Internal Revenue Service. Our afternoon session will be devoted to hearing officials of the Internal Revenue Service and additional witnesses at that time.

STATEMENT OF SENATOR STEVENS

Senator Stevens, would you care to make a comment?

Senator STEVENS. Yes, I would.

Mr. Chairman, I want to thank you for the opportunity to make some remarks here. I don't intend to make a long statement, but I do want to thank you and all who have agreed to testify for taking the time to attend this hearing.

Over the past few years, the Internal Revenue Service has reformed many of its administrative procedures and efforts have been made to protect taxpayers and to assist them. However, even with these additional safeguards, it's apparent that serious problems still exist.

The Internal Revenue Service possesses broad discretionary powers which are unique to that Agency. For example, no other government agency possesses the right to seize property without a court order. That type of descretion, or just the threat of it, can and has led to some abuses.

Senator Abdnor, the chairman of the Appropriations Subcommittee which oversees the IRS, has been very concerned about these continuing allegations of IRS abuses. His leadership in this area is greatly appreciated. Senator Abdnor agreed to hold hearings in Alaska following the release of recent statistics which showed that the seizure power has been used in Alaska in a considerably higher percentage of cases than has been used in the lower 48. There has been some questions raised about those seizures as well as other actions taken by the IRS, and I believe Congress must look into these allegations and make every effort to see that the power of the Internal Revenue Service is not misused.

This hearing will be of assistance in preventing future problems with the IRS, in my opinion. To that end, I look forward to hearing from each of you individually, as well as from Commissioner Egger of the Internal Revenue Service, who was kind enough to come from Washington, D.C. to join us today. Commissioner Egger has made substantial changes in the IRS to date and, I'm hopeful that the testimony at this hearing will justify further revisions of the Internal Revenue Service procedures.

Thank you very much, Mr. Chairman.

Senator **Abdnor**. Thank you, Senator Stevens and I might say that Sentor Murkowski will be joining us. With the flight situation such as it is, I guess he has been delayed for a little while, but I'm sure he'll be here before long.

And as you said, Senator Stevens, Commissioner Egger is with us today, and I'm going to call on the Commissioner to start us off this morning with a statement, if you will.

INTRODUCTION OF ASSOCIATES

Mr. **Egger**. Mr. Chairman, Senator Stevens, I'm very pleased to appear before you today to discuss the IRS procedures and operations in Alaska and the policies on which these operations are based.

With me today and will be available later, is Mr. Philip Coates, Assistant Commissioner for Compliance, who is responsible for policy and program direction for the Services Collection, Examination and Criminal Investigation Division. Also with us is Thomas Cardoza, Regional Commissioner for our western region, which includes the State of Alaska, and then John Carlson, the District Director for the Anchorage District. These last two officials are directly responsible for the management of the IRS operations in the State of Alaska.

I would like to commend the members of the committee for giving me this opportunity to discuss the IRS operations in this kind of public forum. Certainly, one of my highest priorities as Commissioner is to do all I can to bolster public confidence in our system. I have asked our executives around the country to make a greater effort to talk more openly about how the Internal Revenue Service does its work to try to take some of the mystique out of the way the IRS operates. More citizens of our country have direct contact with the IRS than any other agency of the Federal Government and they certainly have a right to know how we do our work.

IRS OPERATIONS IN ALASKA

I'd like to start by giving a brief sketch of the IRS operations in Alaska. In fiscal year 1980, Alaskan taxpayers filed 175,649 individual tax returns, with total revenue collections of $824 million. The IRS issued more than a 140,000 refunds, amounting to $166 million to these taxpayers. The IRS District Office in Alaska has a staff of approximately 200. There are 39 revenue agents, 15 tax auditors, 13 special agents, and 24 revenue officers who worked directly on enforcement activities with the rest of the total staff serving in support, appeals, and service activities, including a taxpayer service staff of 16 which completed 121,476 requests for assistance via telephone and walk-in contact in fiscal 1980. We conducted 7,221 examinations of Alaskan individual returns in fiscal 1980. Special agents of our Criminal Investigation Division in Anchorage conducted a total of 35 criminal investigations in that year. In addition, collection division activities resulted in the disposition of 6,966 taxpayer delinquent accounts and the securing of 3,521 delinquent returns.

USE OF DISCRIMINATE FUNCTIONAL FORMULA

In general, we allocate our field personnel according to where the incidence of and the potential for noncompliance with the tax laws is the greatest. Our Examination Division uses a computerized scoring system to rate all field returns. This process, using a discriminate function formula, commonly referred to as DIF, gives each return a score. The higher the score, the more likely a return is to contain an error. By aggregating these scores by district, we are able to determine the number of higher DIF scored returns in each district and the necessary resources, including revenue agents, that should be assigned to the district in order to cover them and other necessary workloads.

I would like to note that since the DIF scoring system was implemented the proportion of examinations which resulted in no change has dropped from over 45 percent to down around 25 percent. With this improved system of selecting returns for examination, we are able to operate much more efficiently while significantly reducing the number of no changed taxpayers who might otherwise feel harassed by the IRS.

IRS AUDITING PROCEDURES

I would also like to dispel a mistaken notion that IRS spends an inordinate amount of its resources in auditing so-called little taxpayers. Our audit plans for the upcoming new fiscal year call for only about 50 percent of our examination staff to be assigned to individual income tax returns despite the fact that individual returns make up around 75 percent of all the filings. Further, of the 50 percent assigned to individual return audits, more than one-third will be working on taxpayers with earnings or receipts in excess of $50,000 which as a group comprise only about 4 percent of the individual returns filed. This leaves about 65 percent of our individual income tax examiners to cover the entire balance of individual taxpayer returns. This is about 96 percent of all of the individual returns filed.

IRS ENFORCEMENT ACTIVITY

IRS enforcement activity throughout the country has been shaped recognizing that noncompliance left unchecked can erode the positive voluntary compliance attitudes of the majority of taxpayers. Attitudes will remain positive only so long as taxpayers perceive the IRS to be a fair and equitable administrator of what is admittedly a very complex system of taxation. It is equally important that the procedures and policies we use in dealing with instances of noncompliance are fairly and clearly drawn and perhaps most importantly are fairly and consistantly administered at all levels of the IRS organization. It is for this reason, particularly, that I wanted to testify personally at this hearing.

As the new Commissioner, I want to assure the citizens of Alaska of my strong commitment to these principles. Hearings such as this can also help to insure that these IRS policies and procedures can be constructively evaluated by the Congress and by the public. Let me assure you that while I am Commissioner, any shortcomings indentified will be dealt with expeditiously. While this has also been true in the past, we have had difficulties from time to time.

One example which occurred some time ago, but still receives great and wide publicity, involved the seizure of an Alaskan taxpayer's automobile. While the Service acted in that case within the letter of the law, it is clear that our actions reflected a poor judgment call considering the circumstances of the case. However, as a direct result of that incident, several procedural changes have now been instituted. Strict rules now stress that Service employees are not to use force except to stop an attack upon their person, or to preserve the safety of third parties. These rules also require revenue officers to choose the time and location of any necessary seizures in order to limit potential conflicts.

In the recent past, many of our enforcement activities have been criticized and we have received much national publicity due at least in part, to our efforts to deal with individuals who adopt illegal means to avoid payment of taxes. The efforts of the Service to assess and collect taxes from these individuals have not been easy. Attempts of Service personnel to obtain information to allow these cases to be closed are often resisted by tax protestors through delaying tactics such as frequent cancellation and rescheduling of interview appointments, failure to keep scheduled appointments, unreasonably demanding that all communications be made in writing and withholding of records that were specifically identified and requested by the examiners, thus necessitating the issuance and followup enforcement of summons to obtain any taxpayer and third-party records.

HARASSMENT OF IRS EMPLOYEES

Our nationwide experience is that resistance can also take the form of harassment and threats against the Service employees. For example, our employees have been harassed by telephone, receiving abusive or obscene calls at home at all hours. The mails have similarly been used for harassment. Unwanted merchandise has been ordered for delivery and billing to our employees at home; pornographic materials have been ordered, as well as every conceivable form of merchandise, including subscriptions to magazines, record and book clubs, et cetera. Harassment is even carried over to employers who are trying to carry out our new regulations concerning withholding statements. In one recent case an employer representative who was passing out notices explaining the new W-4 withholding statement requirements was told that he might disappear if he continued it.

CHARGES OF IRS HARASSMENT OF TAXPAYERS

We've been told by some that our efforts have been insufficient. We've been told that we should be more aggressive. Others have charged that our efforts amount to harassment and are violations of individual rights. Responding to these contradictory and conflicting charges is made more difficult by the prohibition in section 6103 of the code on providing information concerning our dealings with taxpayers. When we are charged with harassment, as in a recent article in Parade Magazine, we are prevented from responding even though as in the case of the individual on the cover of that issue, there is a subsequent criminal indictment for tax violations.

I suspect the tax protestor complaints of IRS harassment will continue, but given the nature of their potential threat to our voluntary system of taxation, I feel that IRS must continue to fairly, but firmly, apply appropriate sanctions to deal with this group. While it is probably too much to ask that the citizens of Alaska or elsewhere in the country, enjoy paying their taxes, I am hopeful that through the give and take of these discussions, that they will at least recognize our efforts to fairly undertake the extremely difficult job we're charged with doing. We surely do not want confrontation with taxpayers. We would like to carry out our responsibilities in as professional and as orderly a way as possible. But I hope the people will also recognize that in any organization with such a difficult mission, mistakes are made. We regret them, but from time to time, they do happen. We sincerely invite comments and suggestions on any problems which can be identified. Each matter will be thoroughly reviewed and appropriate administrative or corrective action taken.

Mr. Chairman, this completes my prepared statement and with your approval, we will appear later in the hearings and respond to questions which the committee members may have and any problem which may be brought up by other witnesses.

Senator **Abdnor**. Thank you, Commissioner. I think that would be good if you could return later in the day after we've had some other witnesses because there may be other points we'd want to bring out here. Again, we thank you for coming to Alaska. We know of your sincere dedication to trying to arrive at a proper way to run the IRS to both benefit the people and Government and we do appreciate the work you're doing. So I guess we'll call you at a later time unless Senator Stevens has something he wants to say.

PREPARED STATEMENT

Senator **Stevens**. No, I think we should hold our questions to the Commissioner later if we may.

There is a statement here by Congressman Don Young, who was going to be with us but he is in another city at another hearing. I wonder if we could put that statement in the record after the statement I made, Mr. Chairman?

Senator **Abdnor**. You bet. Without objection, we'll submit the statement of Congressman Don Young, who I know very well. I started Congress with Don, we started out together and I know if there was any way possible, he would have wanted to have been here. And again, I know that Senator Murkowski is on his way and we'll give him a chance to either say a few words or submit a statement for the record.

[The statement follows:]

Prepared Statement of Hon. Don Young, U.S. Representative From Alaska

Mr. Chairman, I appreciate your consideration in inviting me to this hearing. I commend the efforts you have made as well as those made by Senators Stevens and Murkowski to bring these hearings to Alaska. I also commend you and the other members of the subcommittee in seeing the need for oversight hearings. Oversight hearings are necessary to ensure that any Federal agency is acting as Congress intended it to. If an agency is not required to account for its actions to Congress, it will begin to expand its authority. This is when abuses occur and there have been abuses with the IRS.

I have said for some time those of us in Congress must take a closer look at the actions of the IRS. Unless the IRS is subjected to close scruting, the rights of all taxpayers are in danger.

ACTIVITIES OF IRS

Many Alaskans already feel that the IRS has become an agency above the law, that it sometimes uses Gestapo tactics to collect taxes, and that it has defied the American tradition that a person is innocent until proven guilty. I have heard from many constituents, some of whom will testify today, who have experienced problems with the IRS which go far beyond the usual problems caused by the payment of taxes. When taxpayers are subjected to seizures without court orders, interrrogation and investigation solely because of membershp in a legal tax information group, arbitrary and abusive treatment by IRS agents, then Congress must look to itself to question whether it is living up to its duty to protect citizens from abuses which deny them their constitutional rights?

Because I believe that Congress has failed that duty in the past, I welcome this hearing as a good first step in protecting the rights of the taxpayers. It will help to resolve some of the problems Alaskan taxpayers have experienced. Part of the problem is the nature of the work done by the IRS. Tax collection is a tough business. Disputes between taxpayer and tax collector are inevitable. If some of the problems of lack of communication and understanding are resolved as a result of this hearing, then we will be moving in the right direction. I believe that it is a good sign of the direction of the new administration that Commissioner Egger is here to answer questions about the actions of the IRS.

However, this hearing is only a first step. There should be more oversight hearings to follow up on the questions raised here. I have been working for additional hearings in the House of Representatives and will continue to do so.

LEGISLATION RESTRICTING POWER OF IRS

Even more important than oversight hearings is the need for substantive legislation restricting the power of the IRS. Under current law, there are very few limits on the collection methods which can be used by the IRS. One example of the lack of legal controls on the power of the IRS is that it can seize the property of a taxpayer without a court order. There is no reason to exempt the IRS from the constitutional requirement that property cannot be seized without a court order. There is no reason to allow an IRS agent to freeze bank accounts or shut down a business without allowing the taxpayer a day in court. To close this loophole in the law, I have introduced legislation which would require a court order before property could be seized for the payment of income taxes. This legislation would provide a legal standard which is based on the Constitution and which protects the taxpayer from seizures which do not comply with the law.

TAXPAYER PROTECTION STANDARDS SUGGESTED

Also, I have been developing further legislation which would establish taxpayer protection standards as a matter of law. This legislation would establish legal rights that a taxpayer would be entitled to in dealings with the IRS. I will be taking a close look at the results of this hearing to see if some of the problems which would be addressed by this legislation have been resolved. Taxpayers are entitled to fair, consistent, and reasonable treatment by the IRS. They should not be subjected to continuous and repititious audits and investigations. They should be entitled to rely on the advice given by the IRS. They should be able to obtain a simple straightforward ruling on tax liabilities which would not be subject to higher assessment based on a subsequent audit. They should be entitled to membership in legal tax information groups without the threat of investigation solely because they belong to the group. They should be entitled to the basic presumption of innocence. If these rights cannot be accepted by the IRS as part of administrative practice, then Congress should enact legislation to establish the rights as a matter of law.

Mr. Chairman, I believe that the time has come for Congress to increase its vigilence to insure that the rights of Americans as citizens and taxpayers are not being taken away by the arbitrary use of power by the IRS.With this in mind, I welcome this hearing and look forward to working with you and my colleagues in the House of Representatives to protect the rights that all American taxpayers are entitled to.

Thank you.

NONDEPARTMENTAL WITNESSES

STATEMENT OF BILL VAN DOREN

IRS TAX CASES

Senator **Abdnor**. At this time, we'll start off with our first witness. I'm going to call Bill Van Doren who asked to be able to present his statements earlier. I think he has to leave.

Mr. Van Doren your entire statement will be placed in the record if you would just care to summarize any way you may want to, but you may proceed and you can be assued that your entire statement will be a part of the record.

Mr. **Van Doren**. Thank you, Mr. Chairman. On behalf of myself and my unfortunate clients, whose stories you're about to hear, I'd like to thank the chairman of the committee, Senator Stevens, and other members of the staff and committee for the opportunity to be here this morning and to have a chance to present our stories.

CASE OF WILLIAM S. WOOLLEN

I would like to begin by introducing to you one of my clients by the name of William S. Woollen. Bill Woollen is a Viet Nam-era veteran. He's a helicopter pilot and a very good one. He is one of the chief helicopter pilots for a professional helicopter operation here in Anchorage, Alaska. In 1978 the Federal Government began informal proposals to require professional helicopter pilots such as Bill Woolen to become proficient in IFR procedures, that's instrument flight regulation procedures. Bill made inquiries with the IRS and was told that he was authorized to deduct his educational expenses for this IRS flight training while receiving his VA benefits. He enrolled in flight training in 1978 and in 1979, he used his VA benefits to further his professional career and he deducted his educational expenses pursuant to the IRS regulations and rulings. Subsequent to that, he was audited by Internal Revenue Service here in Anchorage, Alaska, and I would like to read to you briefly the letter that he presented to the predecessor of the current Veteran's Administration leader who is a member, I believe, of the Carter administration. A letter that he has written March 11, 1981. I will give you his words. I believe that they carry impact of their own. I will clean up the language a little bit from time to time. This is written to Rufus Wilson who was then, acting administrator.

Correspondence

Dear Mr. Wilson: I am a veteran residing in Anchorage, Alaska and during the years 1978-79, I was a duly qualified veteran receiving veteran benefits under title 38, section 1677 which is the flight training section. For nearly 20 years many veterans such as myself, sought to obtain further education to improve our skills in their particular trade or business, and pursuant to that end, duly qualified veterans sought the benefits of title 38, section 1677, flight training and beneifts under title

38, section 1681, which are the general academic benefits. Generally speaking educational expenses and furtherance of a current trade or business, or the improvement of skills in a current trade or business, are properly deductible under Internal Revenue Code section 162 as set forth in Treasury regulation, section 1.162-5. You might note that educational expenses that qualify a person for new employment or a new trade or business, are generally considered personal living expenses and are nondeductible pursuant to Code section 262. I am now, and was at all times pertinent, a helicopter pilot working in Anchorage, Alaska, and I sought to improve my skills by obtaining further flight training in my chosen field, which did not qualify me for another trade or position and in fact, I have met all of the provisions of Treasury regulation, section 1.162-5. In 1978-79 I sought to utilize my veteran's benefits for further flight training under title 38, section 1677. At that time I was provided with publication 508 from the Internal Revenue Service for 1978 and this same publication was utilized for 1979 without change which was based upon revenue ruling 62-213.

I would like to digress for 1 minute to point out that these publications are provided by Internal Revenue Service to the public who rely upon them and are inquiring of information concerning the tax laws and how they apply to certain situations, hopefully that might apply to the taxpayer. Back to his letter:

CORRESPONDENCE

In that revenue ruling, referring to 62-213, it was held that expenses for education, paid or incurred by veterans which are properly deductible for Federal income tax purposes, are not required to be reduced by the nontaxable payments received during the tax year from the Veteran's Administration. It appears clear that revenue ruling 62-213 was a correct interpretation by the Internal Revenue Service of congressional intent with regard to the indirect tax ability benefits received pursuant to title 38, section 3101 A and B.

I might digress for just 1 minute. Those sections that are referred to here in the letter, basically state that it is improper for the Internal Revenue Service—actually in more general language, they say that benefits received from the Veteran's Administration are not subject to taxation, either directly or indirectly. Back to his letter.

Then in 1980, the Internal Revenue Service promulgated revenue ruling 80-173 wherein they singled out flight training for special tax treatment. In that revenue ruling, it was held that payments that are measured by the costs and expenses incurred by a veteran in attending flight training would not be deductible by him. Although the revenue ruling seemed to imply that veterans who receive assistance under section 1681 and who apply those benefits for their costs of education may nonetheless deduct the costs of education, the net effect is to indirectly tax veterans who are attending flight training. I was unable to find any intent by Congress that the two types of veteran's benefit, if indeed they can be distinguishable, were intended to carry different tax treatments. In addition, the Internal Revenue Service is attempting to retroactively apply revenue ruling 80-173 to a veteran, such as myself, who attended flight training in 1978-79. Veterans like myself who relied on the Internal Revenue Service's previous position and the apparent intent of the veteran's benefits law under title 38, have thus been caught unaware by the IRS and the Service's indirect taxation now of flight training benefits which has created a hardship for myself and I am sure for other veterans in my position. Any assistance you may provide for me and other veterans like me, in either convincing the Internal Revenue Service to change its position as set forth in Revenue Ruling 80-173, or in introducing legislation with the Congress to eliminate this tax discrimination against some veterans as opposed to others would be deeply appreciated.

GI BENEFITS TO VIETNAM ERA VETERANS

Now of course that was promulgated under the previous administration. Nonetheless, it would seem that for a Vietnam-era veteran, who served his country well, who now returned back to the United

States and is attempting to seek out benefits under the GI bill, should not be required to pay a special tax penalty merely because he chooses flight training as opposed to some other type of skilled training, or academic training. It is our position, that is to say Mr. Woollen's, that even if the Internal Revenue Service feels that the rules concerning flight training and its taxability should be changed, they should not affect those veterans who have already relied on the previous IRS regulations and rulings in attending school. It seems unfair to change the rules after the game's already over.

And by the way, I'd also like to point out that in Aviation News, there was a recent article that was apparently contributed to by the legal staff of the Aircraft Owners and Pilots Association. This is not an isolated incident. Apparently there have been complaints from all over the United States which have been received by the legal department of the AOPA, indicating that other veterans have been caught up in the same change of rules.

[Reference material relating to William S. Woollen follows:]

SUBMITTED MATERIAL OF WILLIAM S. WOOLLEN.

WILLIAM S. WOOLLEN 230-50-4026

Bill Woollen is a Viet Nam era veteran and a helicopter pilot, a very good one. He is the chief helicopter pilot for a professional helicopter operation here in Anchorage.

In 1978 the federal government began informal proposals to require professional helicopter pilots become proficient in IFR (instrument flight regulations) procedures. Bill made inquiries with the IRS and was told that he was authorized to deduct his educational expenses for IFR flight training while the VA benefits paid for the same were not income (by statue). He enrolled in flight training in 1978, using his VA benefits to further his professional career. He deducted his educational expenses pursuant to IRS regulations and rulings.

In 1980, the Carter Administration proposed new rules, and in a ruling disallowed any deduction for flight training expenses. Note: all other types of training were deductible if otherwise qualified. Worse yet, the IRS changed the rules after the game was over--making them retroactive to years prior to 1980, and after many veterans had relied on the prior rules.

Nothing in the G.I. Bill suggested that Congress singled out flight training for special taxation treatment.

POINT: Even if the IRS feels the rules should be changed, they should affect those veterans who have relied on previous IRS regulations and rulings in attending school.

POINT: The IRS position seems contrary to the intent of Congress in passing the G.I. Bill as amended.

March 11, 1981

Honorable
Rufus H. Wilson
Acting Administrator
of Veterans Affairs
Veterans Administration Building
810 Vermont Ave. N.W.
Washington, D.C. 20420

Re: Indirect taxation of Veterans Benefits

Dear Mr. Wilson:

I am a veteran, residing in Anchorage, Alaska, and during the years 1978 and 1979 I was a duly qualified veteran receiving veteran benefits under Title 38, Section 1677 (flight training). For nearly 20 years, many veterans such as myself sought to obtain further education to improve their skills in their particular trade or business, and pursuant to that end, duly qualified veterans sought the benefits of title 38, section 1677 (flight training) and benefits under title 38, section 1681 (general academic benefits). Generally speaking, educational expenses in furtherance of a current trade or business or the improvement of skills in a current trade or business are property deductible under Internal Revenue Code Section 162, as set forth in treasury regulation 1,162-5. (You might note that educational expenses that qualify a person for new employment or new trade or business are generally considered personal living expenses and non-deductible pursuant to Code Section 262 of the Internal Revenu Code). I am now, and was at all times pertinent hereto, a helicopter pilot working here in Anchorage, Alaska, and I sought to improve my skills by obtaining further flight training in my chosen field which did not qualify me for another trade or positi and in fact, I have met all of the provisions of treasury regulation section 1.162-5. In 1978 and 1979 I sought to utilize my veterans benefits for further flight training under title 38, section 1677. At that time, I was provided with publication 508 from the Internal Revenue Service for 1978 (and the same publication was utilized for 1979 without change), which was based upon Revenue Ruling 62-213. In that Revenue Ruling it was "held, expenses for education, paid or incurred by veterans, which are properly deductible for federal income tax purposes, are not required to be reduced by the non-taxable payments received during the taxable year from the veterans administration". It appears clear that Revenue Ruling 62-213 was a correct interpretation by the Internal Revenue Service of congressional intent with regard to the indirect taxability of benefits received pursuant to Title 38, Section 3101 (a) and (b). Then in 1980, the Internal Revenue Service promulgated Revenue Ruling 80-173 wherein they singled out flight training for special tax treatment. In that Revenue Ruling it was held that payments which are measured by the costs and expenses incurred by a veteran in attending flight training would not be deductible, although the Revenue Ruling seems to imply that veterans who receive assistance under Section 1681 and who apply those benefits for their costs of education may nonetheless deduct the cost of education. The net effect is to indirectly tax veterans who are attending flight training. I was unable to find any intent by Congress that the two types of veterans benefits (if indeed they can be distinguishable) were intended to carry different tax treatments. In addition, the Internal Revenue Service is attempting to reto-actively apply Revenue Ruling 80-173 to a veteran such as myself who attended flight training 1978 and 1979. Veterans like myself who relied on the Internal Revenue Service's previous position, and the apparent intent of the veterans benefits law under title 38, have thus been caught unaware by the IRS and the Service's indirect taxation now of flight training benefits, which has created a hardship for myself and I am sure for other veterans in my position.

Any assistance you may provide for me and other veterans like me, in either convincing the Internal Revenue Service to change its position as set forth in Revenue Ruling 80-173, or in introducing legislation with the Congress to eliminate this tax discrimination against some veterans as opposed to others would be deeply appreciated.

Looking forward to hearing from you, I am,

Sincerely,

William S Woollen

William S. Woollen, Jr.
P.O. Box 6283 Airport Annex
Anchorage, Alaska 99502

CASE OF MIYOKO KAUFMAN

Mr. **Van Doren**. My next taxpayer case that I'd like to bring to the attention of the committee is that of Miyoko Kaufman. In 1979, the Alaska District of the Internal Revenue Service audited the return of Mrs. Kaufman and her husband. By the way, I'd like to point out that at that particular time during the audit procedure and the appeals that followed, internal administrative appeal that followed, the taxpayer had hired a local CPA to handle their audit and prior to the completion of the appellate hearing and before a decision had been made by the appeal provision, which for Anchorage is handled out of the Seattle regional office, a new form 2848, which is a power of attorney authorizing a representative to speak on behalf of and obtain information from the Internal Revenue Service, to speak on behalf of a taxpayer, was filed by a new representative. In other words, the taxpayer during the appellate procedure had essentially fired the representative the taxpayer had at that time and requested a new representative, in this case an attorney here in Anchorage, to represent their interests during the administrative appellate procedure. Now pursuant to that, the power of attorney which is the form that one fills out and signs and files with the local district where the taxpayer resides, is the form that notifies the IRS who the representative is for the taxpayer. Also provided on that form, and I point out, is a space to indicate whether or not the prior representative's authority to speak on behalf of the taxpayer has been revoked. In this case it was.

NOTICE OF DEFICIENCY

Now that was filed in the case of Mrs. Kaufman, that form, on February 8, 1979 prior to the completion of the appellate procedure. Nonetheless, the IRS went ahead and ignored the new taxpayer representative and sent out their final notice of deficiency on March 3, 1980. During—or rather in that notice of deficiency, the IRS set forth that some $17,900 in taxes, interest, and penalties were due from the taxpayers. Then, in a change of pace or a U-turn so to speak, on April 14, 1980 about 1½ months later, the IRS issued an assessment totaling about $1,800 for the same years. These are tax years, 1975–76. Then on May 30, 1980, the taxpayer being confused about this, having received on the one hand a notice of deficiency saying that they owed $17,000 or almost $18,000, and then on the other hand receiving an assessment for the same years from the IRS saying that they owed $1,800, went down to the local district director, actually the district office for the IRS here in Anchorage, and requested from them a determination as to what the IRS said they owed with regards to 1975–76. They were informed that they owed $1,700—$1,757.43, which was set forth in their assessment. Still not certain, they asked for the IRS personnel here, through their counsel, to verify that that was the amount that they owed the Government to make sure that this amount was correct since the period for filing their claim and petition in the tax court was going to be terminated in about 4 or 5 days. They received in writing from the Internal Revenue Service here in Anchorage, that that was the total amount of taxes, interest and penalties that they owed for 1975–76. In reliance on that written statement from the IRS, the taxpayers paid that amount and of course, they allowed the 90-day period in which you can file a petition in the tax court to lapse. Then, in July of 1980, much to the taxpayers' surprise, the IRS did still another U-turn and they came back and assessed additional taxes and interest of $17,919 for the same 2 years, 1975–76.

REASSESSMENT OF TAX INDEBTEDNESS

Well, the taxpayers felt the IRS should be bound by its statement of May 30, where the IRS said that the taxpayers owed $1,700. At that point in time for the taxpayers to obtain any kind of remedy at all, they would have to pay this $18,000 in order to have standing to sue the Government in the Federal district court. Presumably, if there was a subsequent assessment after that period of time or an additional amount, let's say $50,000 or whatever amount one cares to put in there, they would have to pay that amount also before they'd have standing to go in to the Federal district court. Now, the moral of this story is, it doesn't matter—as far as I'm concerned, it doesn't matter, Mr. Chairman, on whose side of the issues one is, whether it's on the Government's side or the taxpayer's side; this is a terrible way to run a railroad, as far as procedure is concerned. You have a zig and then a zag and then a zig and then a zag. I would like to suggest to the committee that procedures be established internally or if necessary, through legislation, that require the Government to make a determination of what taxes are due, absent a special situation such as fraud or something, but that require the Government and the IRS to determine what taxes are due at the time the notice of deficiency is submitted to the taxpayer for that particular year in question.

Mr. Van Doren. Because if that doesn't happen, the taxpayer does not know what taxes he's liable to pay. For example, I'm sure the committee's aware that before one goes into Tax Court, you do not have to pay up the income taxes, you merely file your petition. On the other hand in order to get into Federal district court, you must pay the taxes before you can gain access to the courts. Now, when there are many thousands of dollars at stake, this creates a tremendous burden on the taxpayers, particularly the middle class and those less wealthy taxpayers, who often have to go out and borrow substantial sums of money in order to gain access to the courts, even though they may have a perfectly valid case against the Government. In order to remedy this, I would suggest that the taxpayers and the Government all be able to decide or know at the point that the statute runs for filing a petition in tax courts, how much money is at issue between the taxpayer and the Government.

SUBMITTED MATERIAL OF MIYOKO KAUFMAN

MIYOKO KAUFMAN 266-66-3795

In 1979, the Alaska district of the Internal Revenue Service audited the return of Mrs. Kaufman and her husband. A final notice of deficiency was issued for the years 1975 and 1976 on March 3, 1980 claiming $17,919.21 in taxes, interest and penalties due. In an abrupt U-turn, on April 14, 1980, the IRS issued an assessment totaling $1,757.43 for the years in question being due.

It should be pointed out, that taxpayers had hired a local CPA to handle their administrative appeal within the IRS concerning the audit which ultimately culminated in the notice of March 3, 1980. Prior to the final determination on audit, the taxpayers hired local counsel to represent them and a Power of Attorney—form 2848—was duly filed with the District Director on February 6, 1980, prior to the completion of the appeals procedure, whereby the CPA's authority on behalf of the taxpayers was revoked. Nonetheless, the IRS went ahead and ignored the new taxpayer representative and sent their final Notice of Deficiency on March 3, 1980—noted above.

On May 30, 1980, thoroughly confused as to the status of matters, the taxpayers requested of the IRS the total amount of taxes owed by them for the years under audit—and subject to the Notice of Deficiency—since the time for filing a Petition in the United States Tax Court was due to expire on June 2, 1980. The local District Office checked the IRS records and stated, in writing, that the total amount of taxes, interest and penalties due for the years in question was $1,780.36. Taxpayers promptly paid that amount in reliance of the IRS statements, received a written statement from the IRS that all taxes etc. had been paid for the years 1975 and 1976. A fews days later the statute ran out preventing the taxpayers from Tax Court.

In July, 1980, much to the taxpayers' surprise, the IRS did still another U-turn and assessed additional taxes and interest for the same years totaling $17,919.21. While the taxpayers felt that the IRS should be bound by its statement of May 30, 1980—on which the taxpayers relied—in order for them to obtain a remedy, they were required to pay the assessment in order to bring suit for their case to be heard.

In still another U-turn, the IRS issued refund checks in September, 1980. The IRS still takes the position that in order for the taxpayers to be able to argue the merits of their case (which throughout this long draconian trail they have never been able to do), they must still pay the $17,919.21.

No matter whose side you're on, this is an odd way to "run a railroad".

The IRS has filed tax liens to collect the taxes it claims are due, causing some of tapayers' business deals to halt in mid-stream.

Point: Procedures should be established so that the taxpayers—and the Government—know exactly how much taxes and interest before they are forced into a decision whether they must petition the tax court—no payment until issues tried—or go into Federal court—must pay taxes before they can gain access to court.

CASE OF TONI (M'FARLANE) CARMICHAEL

Mr. VAN DOREN. Next case I'd like to present to the committee is that of Toni (McFarlane) Carmichael. Toni (McFarlane) Carmichael, basically married the wrong man. She married a bona fide 100-percent purebred thug. In fact, he was convicted of embezzlement here in Anchorage. Like most crooks, he didn't pay taxes on his ill-begotten funds and he also didn't share them with his wife.

He was later deported on multiple felony warrants from Interpol back to Europe and he had left the now ex-wife, Toni McFarlane, with thousands of dollars of debt that he'd run up. Obviously, a broken heart, having gone through the criminal proceedings with her husband to see him finally admit that he was a guilty felon and then depart. And then along came the IRS. She owed taxes on all that embezzled money, and that's what the IRS alleged, thousands and thousands of dollars. Now my client was finally able to prove through independent witnesses—and believe me their names read like a who's who of Anchorage, bankers, lawyers, doctors, well-known members of our community here in Anchorage—that she did not know about these embezzlements at the time and she received no benefit from it. This is what is known usually as the innocent spouse defense. Unfortunately, however, the husband also took bogus business deductions. These could not be proven of course, he'd taken his records with him. You know, embezzelers don't like to leave them around, and he just didn't make them available to my client to prove out which business deductions were legitimate and which were not. The result was, of course, the burden being on her to establish what they were, she had to pay tax on that amount at least, because the relief from taxes for innocent spouse provisions that were part of the law, don't apply to business deduction. Then on top of all these debts that he left her and the additional taxes she had to pay, she also had to pay her attorney fees, vindicating her rights against the IRS. The point I would like to suggest is that a few years back Congress passed a statute that was, I believe, intended to assist taxpayers who find themselves involved in good faith litigation with the Government, whereby if they were to prevail when the Government sues the taxpayer, they can collect attorney's fees. Unfortunately, however, the overwhelming majority of cases, probably more than 90 percent of them, are cases in which the taxpayer in fact, is suing the Government because in tax courts, the taxpayer is the petitioner and in the Federal district court the taxpayer is the plaintiff. The provisions that were passed by the Congress concerning attorney fees in successful cases involving taxes, apply only when the taxpayer is the defendant. Therefore, there's no benefit to the taxpayer. I think that they should—I think that this should apply to taxpayers who are successful in their case against the Government.

This is a real hardship on the middle class and those of the working class because the attorney fees are extremely expensive for them. They may have a perfectly legitimate claim against the Government concerning their taxes, but they can't afford to prosecute because they know at the other end, there's no relief basically for them. It's true that the attorney fees are deductible but when you're in the 25-percent tax bracket, that doesn't mean very much.

INNOCENT SPOUSE DEFENSE

The other point I'd like to make if I might, is that I think that thought should be given to allowing and innocent spouse defense to apply to deductions, business deductions that are related with the unrecorded income activity itself, because there's no way, generally speaking, that an innocent spouse in a situation like Ms. Carmichael (McFarlane), can possibly prove up, as her burden was, what deductions the felonious husband had.

SUBMITTED MATERIAL OF TONI MCFARLANE CARMICHAEL

TONI (McFARLANE) CARMICHAEL 552-70-4226

Toni Carmichael McFarlane married the wrong man. She married a bona fide criminal named McFarlane who was convicted of embezzlement. Like most crooks, he didn't pay taxes on his ill-begotten funds, he also didn't share them with his wife. After her husband was being deported on multiple felony warrants from Interpol, the hapless—now ex-wife—taxpayer was left with thousands of debts run up by her dishonest husband. Then along came the IRS. She owed taxes on all that embezzled money—said the IRS—thousands and thousands of dollars.

Toni was finally able to prove, through independent witnesses whose names read like a who's who in Anchorage, that she was an innocent spouse and didn't know about the embezzled funds. The "business deductions" taken by the ex-husband couldn't be proven of course, so taxes had to be paid on those amounts so disallowed—the relief from taxes for innocent spouses doesn't apply to deductions. Then she had to pay all those attorney fees in indicating her rights against the tax collectors.

Point: Congress passed a law a few years back which allowed taxpayers to collect attorney fees against the government but only when the government was the plaintiff. Almost all tax cases are tried when the taxpayer brings suit in the Tax Court or the Federal courts—the attorney fee reimbursement doesn't apply to them. It should.

Point: Thought should be given to allowing an innocent spouse defense to apply to bogus deductions as well as omitted income where the spouse doesn't really benefit from them and can not defend herself, or himself.

CASE OF GARY BARNHART

Mr. VAN DOREN. The next case that I would like to take up if I might, is that of Gary Barnhart. Gary Barnhart is a petroleum engineer here in Anchorage. He's been up here since about 1976. he came up during the height of the pipeline construction project. He was hired in Houston, Tex., his former residence, to work for a company down there and he was shortly thereafter transferred to Alaska. He was paid what was called by his employer a nontaxable per diem amount in addition to his salaries. Now normally a salary obviously is income that's taxable, but there are often cases where a person who's on temporary assignment receives per diem payments which are basically reimbursements for the cost of living on a temporary site, such as food and shelter, and they are income but they are also deductible at that point and also there's a provision in the law that says if a taxpayer has to render an account to his employer, that is, he has to account to his employer for his travel expenses while away from home, his meals and lodging, that that is not treated as income to him. That's treated as a wash, basically. Well, in any event, Mr. Barnhart, though, received per diem and in 1980, apparently his employer was audited down in Houston, Tex., not only on behalf of Mr. Barnhart, there were a number of petroleum engineers for the same employer that were hired in Houston that came up here to Anchorage to work. The employer, as a result of that audit, paid additional withholding taxes on the so-called per diem which was determined by the IRS to be additional compensation. In 1980, Gary Barnhart was audited by the local district of the Internal Revenue Service and he was told he had to pay more taxes on the compensation he had received. Now this was for the years 1975 and 1977. Now the IRS says, of course, he owes taxes on the total amount of this additional compensation and that he has no credit coming for the employer contributions. As of today, Mr. Barnhart has been trying for a numer of months to find out from the IRS just how much withholding taxes have been paid on his behalf by his employer for those years. And so far he has not been successful in obtaining an answer to that question.

STORY MORALS

The two morals of this story that I'd like to present are: It would seem to me that an employee who has withholding paid on his behalf by an employer who does not give him a W-2 form—by the way, there were no W-2 forms prepared by the employer in Barnhart's case indicating any withholding or the amount of additional compensation at any time—employees, I believe, should be entitled from the IRS if nowwhere else, to obtain information concerning the amount of their tax liability, which is affected by the amount of withholding taxes that the employer had withheld from their salary and paid over to the IRS. I don't think that would be abusing the Freedom of Information Disclosure Laws or if it is, I think an exception should be made so that an employer can notify, or if the IRS is the only one willing to do so, the IRS can notify the employee how much money is available as an offset to the taxes that are now due. Certainly, it seems unfair for the IRS to try to collect twice: First, against the employer and second against the employee for the same taxes that are due.

The second moral that I have listed is that employers as a matter of law, are not allowed to pick and choose as between Mr. Barnhart for example, and other petroleum engineers, that are in his exact situation. The employer is not allowed to pick and choose some of them to withhold and pay over and not others so long as they're in the same situation. Obviously, if there is a different situation involving a different home or different facts, we're not intending to cover that here.

Submitted Material of Gary Barnhart

GARY BARNHART 272-40-8683

Gary Barnhart is a petroleum engineer. Formerly a resident of Texas, he was hired to come to Alaska during the pipeline construction days for temporary duty. He was paid what was called by his employer, a nontaxable per diem amount in addition to his salary. His per deim was not included in his W-2 statement from the employer and no taxes were paid.

In 1980 the employer was audited and paid additional withholding taxes on the additional compensation—the per diem—for the employees like Gary Barnhart. The employer is located in Houston, Tex. In 1980, Gary was audited by the local district of the IRS and told he had to pay more taxes on the compensation he received—for 1975 and 1977.

Now the IRS says Gary owes taxes on all that pay and that he has no credit coming for the employer contributions. He has been trying for months to find out how much the employer paid in withholding for him but the IRS isn't telling.

Employees should be entitled to receive from the IRS the information on amounts of withholding paid by the employer.

Employers are not allowed to pick and choose some employees for withholding but not others—of the same group.

CASE OF PHILIP LOCKWOOD

Mr. Van Doren. Lastly, I would like to bring up the story of Philip Lockwood. In some ways, I think this is the most egregious of them all. Philip Lockwood was audited for 1975 through 1977. Incidently, he is a local small businessman here in Anchorage, been up here obviously, a number of years. The audit involved his schedule C, which is the schedule dealing with a private entrepreneur's income and expenses in conducting his business. During the course of the audit, Mr. Lockwood's CPA discovered that there were substantial operating losses for 1976 that would wipe out the liabilities for 1975 and 1977. And incidentally, I'd like to add here, it's not in the sheet, but I'd like to add here that at no time has the IRS ever disputed these losses were bona fied net operating losses or ever disputed the amount of the losses. Instead, as you will see, they took a different path.

A claim was duly filed by the CPA for the net operating losses for 1976 which carried back to 1975 and then forward to 1977. Some 2½ years later, the IRS finally notified the taxpayer that the form that was used was deficient and he'd have to file it on another form. I'd also like to point out here that there are literally hundreds of forms and there have been something like three or four changes on the method of reporting net operating losses and also on reporting claims for refunds during the last 5 or 6 years.

There have been several changes on the types of format to be used. But what happened here was that the IRS waited 2½ years to notify the taxpayer they didn't like the way he filed the form. That is, the CPA on his behalf. Immediately thereafter, the taxpayer filed his claims for refunds on the forms suggested or implied by the IRS personnel, form 1040-X. Now what happened? The IRS came back and said, "You're too late. If you filed on form 1040-X, you know, back 2½ years ago, or even 6 months ago, or even 1½ years ago, we would have allowed it. But you waited too long."

Now, the moral of this story I'd like to present to the committee, is as follows: What happened here is the IRS sat on a perfectly valid claim, although on the wrong form, until the statute of limitations ran, denying the taxpayer an opportunity to ever have the merits of his claim presented anywhere. It's very likely this taxpayer will never be able to obtain the benefits of his net operating loss because he can't file a claim in the district court. What's more the statute says he has to file it within a certain period of time. The IRS sat on this far beyond the time period in which he can file or get any kind of relief at all. This sort of gamesmanship I am afraid, unnecessarily complicates the procedure that those of us in good faith on both sides of the tax question, are trying to administer in this complicated system, both from the Government's side and the taxpayer's side and that sort of gamesmanship wrangles with not only the tax practitioners, like myself, but with the general public. It's that sort of administration of the tax laws that seems unfair and when viewed by the unsophisticated public out there, it's grossly unfair.

For example, nowhere does it seem that the IRS is required to notify a taxpayer who has a pending claim for refund or in this case, a net operating loss, nowhere does it seem that the IRS is required to notify and unsophisticated taxpayer such as off the street, that he must file a claim in the district court within 2 years, for example, of the time that he has paid the additional money, or in the case of a refund, 2 years from the date—the final date that the return was due. And if he doesn't file it within that period, he is precluded from ever getting a hearing on that matter, period. Nowhere does—is the IRS required to notify him of that fact.

STATUTE OF LIMITATIONS

My suggestion would be that the committee consider tolling the statute of limitations during the time period which the IRS has a claim before it. That would mean that if there's a 2-year statute of limitations for example, on claims for refund in the district court, if there's an administrative claim for refund which is a required predecessor to filing a claim in the district court, if there's an administrative claim for refund with the IRS, that during the time that that claim has been filed, assuming it's filed timely and the IRS is taking some sort of action on it, or perhaps no action, that the 2-year statute be held in abeyance until the IRS makes a decision. That would allow the taxpayer, if the IRS denies his claim, to gain access to the district court and pursue it on the merits.

SUBMITTED MATERIAL OF PHILIP P. LOCKWOOD

PHILIP P. LOCKWOOD 370-44-2870

Philip Lockwood was audited for the years 1975 through 1977. During the course of the audit, his CPA discovered that there were net operating losses in 1976 that would wipe out the liabilities for 1975 and 1977, a claim was duly filed.

IRS said that the form of the claim for refund was technically deficient and that the taxpayer would have to file a claim for refund—form 1040-X. Said notification was in 1980.

Immediately thereafter, taxpayer filed his claims for refund of that same net operating loss—in 1980. Now the IRS says he's too late.

The IRS should not be allowed to use the administrative rules to sit on a good faith claim by a taxpayer until the statute of limitations has run, then deny the claim—probably erroneously—thus preventing the taxpayer from gaining access to the courts, if necessary to prove up his claim for refund. This sort of gamesmanship unnecessarily complicates the administration of the tax laws and leaves the public with the idea that such administration is capricious and unfair.

The statute of limitations should be tolled against taxpayers during the time the IRS is reviewing claims so that if they are ultimately denied, the taxpayer has redress in the courts.

Once again I would like to thank the committee for an opportunity to be here today, both on behalf of myself and on these people that I presented to you today.

Senator ABDNOR. Thank you, Mr. Van Doren, We do appreciate your testimony and your explicit examples you've set out in your five pages here and we also appreciate your very constructive suggestions that will be considered.

Just a minute. Senator Stevens, maybe——

Senator STEVENS. No, I have no questions. Thank you.

Senator ABDNOR. Thank you very, very much.

I might say, Senator Murkowski has now come in to the room and we welcome him.

Senator MURKOWSKI. Good morning. I bring you sunshine from Fairbanks and a little bit of a delay on the airlines, but it's nice to be here.

Senator ABDNOR. It's great for us for you to be here and we think you did very well considering the problems with the airline strike going on right now.

Our next witness is Dr. Belton Stephens. Is Dr. Stephens in the room?

Next is Norman Grant.

Mr. Grant, do you have a written statement at all?

STATEMENT OF NORMAN B. GRANT, JR.

Mr. **Grant**. I have a written statement. I gave a copy of it to Senator Stevens yesterday.

Senator **Abdnor**. Do you want to read from it or do you want——

Mr. **Grant**. I'd be glad to read from it.

Senator **Abdnor**. We're happy to have you summarize your statement. Your whole statement as written will be placed in the record, I assure you.

Go right ahead.

Mr. **Grant**. Thank you, Senators, and gentlemen.

My name is Norman B. Grant, Jr. I'm a businessman here in Anchorage; I've been here for 21 years. I feel that I have been personally harassed by the IRS over the past years. I'm actually a little bit sorry that I started this because I'm sure that I will hear from the IRS over a period of the next few years as a result of coming here. Be that as it may, I have written out a brief summary of my feelings dated August 3, 1981, and directed to Hon. Senator Ted Stevens, relative to local investigation of the Internal Revenue Service.

My summation goes as follows:

> Ted, I read in the paper that you are investigating the frequency with which the IRS hassles the local citizenry of the State of Alaska. I should like to bring your—bring to your attention the fact that I have had to go through an IRS audit each and every year from 1965 through 1978 inclusive. They have not yet called me in for 1979 and I have not filed for 1980 as yet, being on an extension.
>
> Also, within the past 30 days I have been the victim of an extortion plot by three ex-IRS employees. The results of those men being hauled before the grand jury are not yet public. The point is that one of the men, Francis L. Avezac states that he has not filed an income tax return since 1976, saying that he knows the IRS and how to get around them. An examination of a list of acquaintances of Avezac, who have not agreed with him since he quit IRS in 1977, shows better than 90 percent of those folks having been audited. Does the IRS have this man on their payroll? Is he not subject to filing his personal taxes? And how does IRS justify letting him go from 1978 to present and not having to pay the W-2 moneys he has withheld from his business or in his business, which is Sunshine Laundry and Drycleaning. Can this be helpful to you?

I have signed my name Norman B. Grant Jr., P.O. Box 4-1909, Anchorage, Alaska.

That is the complete letter that I wrote to Senator Stevens.

Senator **Stevens**. Mr. Chairman?

Senator **Abdnor**. Senator Stevens.

Senator **Stevens**. I've known Norm for a long time. Let me first tell you that I am confident that there won't be any harassment as a result of your appearing before this committee. If there is, we'll certainly look into that. I don't believe that's the policy of the IRS under Mr. Egger, and I'm sure he'll make a statement like that himself.

But when is—what has been the basis for your audit every year? I don't understand being audited year after year.

QUESTION OF CORPORATE LIABILITY

Mr. **GRANT**. In 1969–70, I was involved in a very small corporation. The corporation went bust, the people who had been in the corporation had not had any withholding, did not take any withholding out of themselves. It took me until 1978—I should say that IRS filed and levied against me personally, having been one of the officers in the corporation and it took me until 1978 to find out that somebody else in the corporation, had filed some W-2 forms which I had known nothing about. That particular person was excused from paying any taxes and I was held to be totally liable for the withholding that had been done, plus a 100-percent penalty. As I say, the person who had actually paid those filings had given an affidavit to the IRS, which I was never allowed to see. And it took me until 1978 to find those things out.

On my individual tax returns between 1965 and 1978—incidentally, 1978 was finally zeroed out—no—or accepted finally after about a 20-hour audit, which was accepted as it was, but through those years because I had used the same CPA all the way through, I got small returns additionally back. But the point is why should an individual citizen who is paying his taxes continually have to go through the preparation for an audit which takes me about 20 hours of actual work, and I had to pay my CPA somewhere around $60 an hour average over those years. It's now about $90 an hour and I have no redress for that.

My wife and I sat down last night and concluded that over the years it has cost us nearly $11,000 worth of CPA bills and I have no way to recover those things, except using them as a writeoff for the next year as a business writeoff. And this is a very grim thing to face. The IRS up here is extremely arbitrary. I have to say that in the past I feel that they have no respect for the law of the land. They make law unto themselves up here. When you ask them a question in an audit, they say, "That's what the ruling is and that's the way it is."

Senator **ABDNOR**. Well, thank you, Mr. Grant. Senator Stevens and I feel sure that there will be no harassment out of IRS because of your testimony here today and we are anxious to receive this kind of information and I assure you that it will be made part of the records and we thank you for coming.

Senator **MURKOWSKI**. I have no questions.

Senator **ABDNOR**. Thank you very much.

Mr. **GRANT**. Thank you very much.

SUBMITTED MATERIAL OF NORMAN B. GRANT, JR.

Date: August 3, 1981.
To: Hon. Ted Stevens, U.S. Senator, Alaska.
Re Investigation of the Internal Revenue Service.

Ted: I read in the paper that you are investigating the frequency with which the IRS hassles the local citizenry of the State of Alaska. I should like to bring to your attention the fact that I have had to go through an IRS audit each and every year from 1965 through 1978 inclusive. They have not yet called me in for 1979, and I have not filed for 1980 as yet (being on an extension).

Also, within the last 30 days I have been the victim of an extortion plot by three ex-IRS employees. The results of those men being haled before the Grand Jury are not yet public. The point is that one of the men, Francis L Avezac, states that he has not filed an income tax return since 1976, saying that he knows the IRS and how to get around them. An examination of a list of acquaintenances of Avezac who have not agreed with him since he quit IRS in 1977 shows better than 90 percent of those folks being audited. Does the IRS have this man on their payroll? Is he not subject to filing his personal taxes? And how does IRS justify letting him go from 1978 to present and not having to pay the W-2 moneys he has withheld from his business which is Sunshine Laundry and Dry Cleaners? Could all this be helpful to you?

STATEMENT OF DAN KELLMAN

Senator ABDNOR. Our next witness is Dan Kellman.

Mr. Kellman, we welcome you to the committee today and we'll submit your entire statement as I said, for the record, if you'd just care to summarize it, or proceed any way you may.

Mr. KELLMAN. My tax returns have been audited by the Internal Revenue Service for the years 1971-72, 1974-77. I was advised just recently by the Internal Revenue Service attorney, that I can anticipate appearing in tax court on my 1978-80 returns probably prior to a decision on my 1976 return which is in front of the tax court, since 1980 for a decision.

In 1971, the Internal Revenue Service audited my return and they told me I owed them an additional $20. I had no recourse but to pay so I signed on the dotted line and I paid. In 1972, I was told that I owed them an additional $90 because there was some discrepancy between the value set on a loss, it was a casualty loss that I suffered, and that I had no choice but to sign on the dotted line and pay the money because they were the IRS and they made the final decision on that. I was not audited in 1973. In 1974, I disagreed with the examiner of my tax return also. They said I owed an additional $496. Well, I wasn't signing on any more dotted lines and I walked out.

NOTICE OF DEFICIENCY

Several months later, I received a notice of deficiency and somewhere in the fine print there was a little statement about right to appeal to a tax court which had never been advised me in the past. Well, I elected to go the route of the tax court and as it turned out 1 week before I was to appear in tax court, the IRS decided that I did not owe them any money and I asked their disclosure officer at the time—his name was John Minkin—how much did the IRS spend on time to cheat me out of my money up to that point and he estimated they had invested about $5,000 just prior to going to tax court. It would have cost, he said, probably another $3 or $4,000 if we went to trial.

I requested a copy of my file from the IRS prior to the Tax Court for my 1976 return through the Freedom of Information Act. One document which I found quite disturbing, which is attached to this, is a memo which I was told was from the district director's office to his secretary assigning my case to an auditor, Mrs. Louise Weeks, calling me a tax protestor-type who needs a little special attention. Well, I've been getting this special attention for years and it's about time someone made the IRS stop giving me and thousands like me special attention of all taxpayers. My 1975 tax return was audited. It was a 1040-A short form and they audited it. Now that's real good special attention. They decided I did not owe them any money on that return either. I did not agree with their examination of my 1976 tax return. I filed a petition for tax court. The amount disputed is $297. When I went to tax court in June 1980 for my 1976 tax return, the IRS attorney told me—I had questioned him about it—that prior to going to trial he estimated the Government had spent approximately $10,000 preparing my case. That seems a pretty steep price to pay for special attention. The court has not yet decided my 1976 tax case yet. the issue was—one of the major issues, was my donation to the Universal Life Church. I have read a letter by the IRS giving the Universal Life Church tax-exempt status as a 501(c)(3) organization, which, I believe, is called a religious nonprofit organization. And the U.S. court decision issued by Judge James Battin that said Universal Life Church was in fact, entitled to that donation. It was a bonafide church with a right to charter churches and ordain ministers. I'd like to know, where does the IRS get the right to ignore these court decisions? The Constitution of our great land guarantees the right to freedom of religion. Why does the IRS have the right to ignore these guarantees of the Constitution and the Bill of Rights? Why are they allowed to operate outside the laws that apply to everyone else?

I was advised by the judge in 1980 for my 1976 tax case that my 1977 tax case would be heard in Anchorage in the summer of 1981. The IRS wanted to try 1976-77 together but I objected. When I went to court in 1981 for my 1977 return, the IRS said they were not ready for trial this year. I told the judge they were ready for trial last year; it seemed logical that they would be ready for trial this year. They said they were not and the judge says I was to come back in 1982 for my 1977 tax return issue.

One point I'd like to bring out at this time is, that I never received a taxable income over $10,000 until 1978. All the thousands of dollars the IRS had the Government spending on harassing me to date has been on gross income under $10,000. I think that's a little ridiculous. And prior to my Tax Court case in 1976, there has been an awful lot of interference on my phone. I'm not a paranoid person but I've been of the opinion that the Internal Revenue Service might have some surveillance going on of my phone. I've attempted to find out if that's true or not and I have not had any results. I've even called to their Intelligence Division and they—it amounted to they just laughed at me on the phone when I questioned them about that.

I've spoken to lots of people who have been intimidated by the IRS. Most people are afraid to come out and speak against the IRS, afraid they'll retaliate in the form of audits and things like that. I'm already getting plenty of high priced special attention and I felt it would not injure my position with the IRS to come forward and speak my peace.

Senator **Abdnor**. Thank you, Mr. Kellman. Do you know of any reason why you're undergoing this harassment by the IRS?

UNIVERSAL LIFE CHURCH AFFILIATION

Mr. **Kellman**. Well, at this point, I believe it's because of my religious affiliations with the Universal Life Church, which is one of their very disputed organizations. But prior to 1975, I was not affiliated with this church in any way and they started this harassment of me in 1971.

Senator **Abdnor**. Thank you.

Senator **Stevens**. Can you read that memo on the back there? what does it say when you talk about this—I can't quite read it.

Mr. **Kellman**. There's one other thing I wanted to point out here too. This is a memo, I was told when I received this through the Freedom of Information Act, that it was generated from the district director's office at the time and it says: "Pam, please assign to Louise Weeks" and then it says, "Louise, this one will need a little special attention. This is a tax protestor type. I would like you to write a polite but firm letter indicating what records you will need and what is his obligation to provide. If after two attempts he fails to respond, come and talk to me." I can't make out the rest of it.

Senator **Stevens**. You obtained that through the Freedom of Information process?

Mr. **Kellman**. Yes, sir, and another thing I'd like to bring out is—I didn't have it in my statement—but I did find and I attached to the statement, a copy of a subpena issued by Wayne R. Appleman, attorney for the Internal Revenue Service, through the Tax Court. This is on my petition to the Tax Court for my 1976 individual personal tax return. And question No. 1, the first thing they request is, "all lists, records of numbers in the Universal Life Church for 1976-77." Now where does the IRS get off asking me who the members of my church are in my own personal tax return?

Senator **Stevens**. Had you listed a contribution to that church?

Mr. **Kellman**. I did, sir.

Senator **Stevens**. What was the amount of that contribution?

Mr. **Kellman**. I think it was $1,896 for this year in question. And the additional tax liability would have been approximately $297. Including that deduction, they disallowed my whole deduction because we came to an impasse in the examination process and that was a total deficiency. If they disallowed my itemized deductions and they took my figures on a short form without any deductions at all, the discrepancy would have been an additional $297.

Senator **Stevens**. And all this took place after that ruling that the church was a bona fide 501(c)(3) organization?

Mr. **Kellman**. Yes sir, and the decision was issued, I believe, in 1974, March 1, 1974. It was issued in the U.S. District Court for the Eastern District of California.

One thing I'd like to read into the record——

REQUEST FOR CHURCH MEMBERSHIP

Senator **Murkowski**. Excuse me. I have one question. Where you indicated that you were asked for the names of the members of your church, is that an official IRS letter or document?

Mr. **Kellman**. This is in a subpena that was issued by the U.S. Tax Court by Wayne R. Appleman requested that information. Mr. Appleman was part of the IRS regional counsel's office out of Seattle. He was the attorney that tried the case for the IRS in my 1976 tax return and that's the first piece of information that he requested from me.

Senator **Murkowski**. Do we have that in the record?

Mr. **Kellman**. I believe that is attached in the statement.

I would like to read one thing.

Senator **Stevens**. Are you an officer of the church?

Mr. **Kellman**. I am a pastor in the local congregation.

Senator **Murkowski**. How large a congregation is here in Anchorage?

Mr. **Kellman**. Well, the church is one entity. There are several different congregations. The congregation I belong to has a membership of approximately 50 families.

Senator **Murkowski**. Here in Anchorage?

Mr. **Kellman**. Here in the Alaska area. It varies through—some people live up in Delta or Fairbanks or Trapper Creek.

Senator **Abdnor**. Is this before the Tax Court? Have you gone to——

Mr. **Kellman**. My 1976 tax return has been—I went to Tax Court in June 1980 and there have been no decisions on that issue yet. My 1977 return was supposed to go this year and the IRS said they weren't ready to go this year. They didn't want to go, so the Tax Court judge said that we didn't have to go this year. I had to wait 1 more year to appear in Tax Court to settle the issue of 1977.

Senator **Stevens**. What's the issue on that?

Mr. **Kellman**. The same thing. They're disallowing my whole return, but the major issue according to Mr. Appleman, the Internal Revenue Service attorney, when I appeared in 1981 to question the judge why I wasn't being called this year, he made mention that their issue and their disallowance was based on the religious contributions that I had made to this organization again. And that was the substance of their issue. That was the point in dispute.

Senator **Abdnor**. You may proceed.

Mr. **Kellman**. This is part of the decision issued by Judge James F. Battin, U.S. District Court for the Eastern District of California. *Universal Life Church* v. *United States of America.*

> Neither this court nor any branch of this Government will consider the merits or fallacies of a religion. Nor will the court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. were the court to do so, it would impinge upon the guarantees of the first amendment * * *

Senator **Stevens**. Do you receive a salary from the church?

Mr. **Kellman**. No sir, I don't.

Senator **Abdnor**. We're happy to have all of this and it will be made again, part of the records. I'm sorry, but I think we'll have to proceed here. We have a long list of witnesses. Glad to have your testimony and again, we'll certainly give it due consideration.

Mr. **Kellman**. Thank you, gentlemen for taking the time to come here and hear myself and the other people that are going to testify here.

[Reference material relating to Daniel M. Kellman follows:]

Submitted Material of Daniel M. Kellman

August 3, 1981

Dear Senator Stevens:

My name is Daniel M. Kellman and my mailing address is P. O. Box 383, Chugiak, AK 99567.

My tax returns have been audited by the IRS for the following years: 1971, 1972, 1974, 1975, 1976 and 1977 I have been advised my 1978, 1979 and 1980 returns will be audited shortly. I was charged an additional $20 on my 1971 return. On my 1972 return I was assessed an additional $90 plus interest. I did not agree with the examiner in either case. I was told I had no choice as she was the IRS examiner so "sign on the dotted line and pay the additional money". I was never advised of my right to appeal to tax court. I disagreed with the examiner on my 1974 tax return examination too. They said I owed an additional $496.00. Well this time I just walked out of the IRS office. Shortly thereafter I received a statutory notice of deficiency. Hidden in the obscure print was a notice concerning appealing to tax court. I petitioned the United States Tax Court. The IRS decided to settle less than one week from tax court for my 1976 return in July of 1977. They decided I did not owe them any additional taxes. I asked the IRS how much they had spent trying to cheat me out of $496. They said approximately $5000.

I request a copy of my file from the IRS prior to the tax court for my 1976 return through the Freedom of Information Act. One document which I found quite disturbing is attached. It is a letter from the District Director to his secretary assigning my case to an auditor Mrs. Weeks calling me a Tax Protester type who needs a little special attention. Well I've been getting this special attention for years and it's about time someone made the IRS stop giving me and thousands like me special attention at the expense of all taxpayers. My 1975 tax return was audited. I filed a 1040-A Short Form and they audited it. They decided I did not owe them any money on that return.

I did not agree with their examination of my 1976 tax return. I filed a petition for tax court. The amount disputed is $297.00. When I went to tax court in June 1980 for my 1976 tax return the IRS attorney told me that prior to trial the Government had spent in excess of $10,000 preparing my case. That seems pretty steep price to pay for "special attention". The court has not decided my 1976 tax case yet. The issue was if my donation to the Universal Life Church was to be allowed.

I have read a letter by the IRS giving the Universal Life Church tax exempt status as a 501,C.3 organization. I have also read a United States Court decision that stated the Universal Life Church was in fact a bona fide church who has the right to charter churches and ordain ministers. I want to know where does the IRS get the right to ignore these court decisions. The Constitution of our great land guarantees the right to freedom of religion. Why does the IRS have the right to ignore the guarantees of the Constitution and Bill of Rights? Why are they allowed to operate outside of the laws that apply to everyone else? From some of the horror stories I have read about them, I can only compare them to the Nazi Gestapo.

I was advised by the judge in my 1976 case that my 1977 case would be heard in Anchorage in the summer of 1981. The IRS wanted my 1976 and 1977 case to be tried together but I objected. When I went to court in 1981 for my 1977 return, the IRS said they were not ready for trial this year. I explained to the judge that since they were ready in 1980 for my 1977 case, why wouldn't they be ready in 1981. The judge said I would have to come back in 1982 for triel on my 1977 return.

One point I wish to bring out is I never earned a taxable income over $10,000 until 1978. All the thousands of dollars the IRS has had the government spend on harrassing me to date has been on gross incomes under $10,000. I do think that is ridiculous.

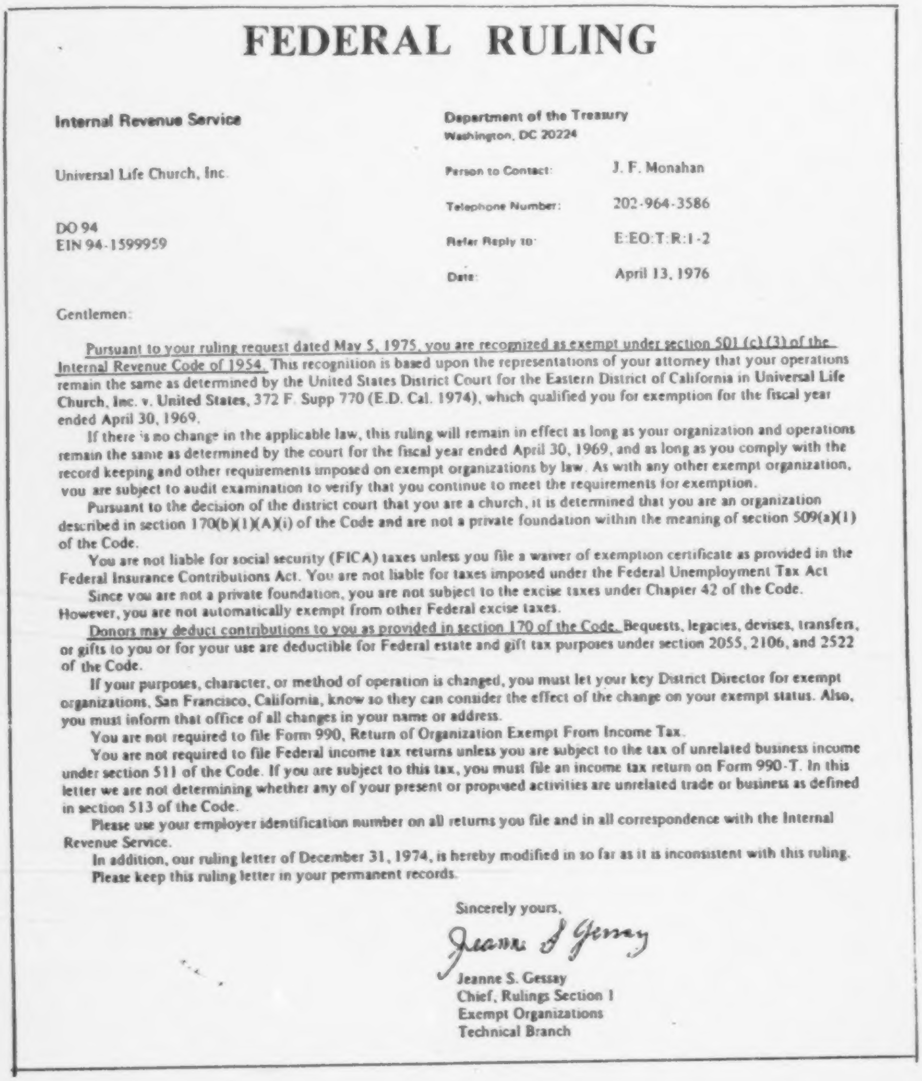
I am not a paranoid person but since prior to my 1976 tax court case I think the IRS has my phone tapped. I have not been able to find any way to verify this. If they do have my phone tapped, there should be someway to find out so I can discover if more of my rights have been violated.

I have over the years spoken with several persons who have been intimidated by the IRS. Most people are afraid to come out and speak out against the IRS. As I am already getting plenty of high-priced "special attention" I felt it would not injure my position to come forward and speak my piece.

I believe in God and the United States and the Constitution and I pray to God that our elected representatives can halt the illegal activities of the Internal Revenue Service before they get any worse and make them clean up their act and stop acting like something out of Nazi Germany.

Sincerely,

Daniel M. Kellman



FEDERAL RULING

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Universal Life Church, Inc.

DO 94
EIN 94-1599959

Person to Contact: J. F. Monahan
Telephone Number: 202-964-3586
Refer Reply to: E:EO:T:R:1-2
Date: April 13, 1976

Gentlemen:

Pursuant to your ruling request dated May 5, 1975, you are recognized as exempt under section 501 (c) (3) of the Internal Revenue Code of 1954. This recognition is based upon the representations of your attorney that your operations remain the same as determined by the United States District Court for the Eastern District of California in Universal Life Church, Inc. v. United States, 372 F. Supp 770 (E.D. Cal. 1974), which qualified you for exemption for the fiscal year ended April 30, 1969.

If there is no change in the applicable law, this ruling will remain in effect as long as your organization and operations remain the same as determined by the court for the fiscal year ended April 30, 1969, and as long as you comply with the record keeping and other requirements imposed on exempt organizations by law. As with any other exempt organization, you are subject to audit examination to verify that you continue to meet the requirements for exemption.

Pursuant to the decision of the district court that you are a church, it is determined that you are an organization described in section 170(b)(1)(A)(i) of the Code and are not a private foundation within the meaning of section 509(a)(1) of the Code.

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for taxes imposed under the Federal Unemployment Tax Act

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes under section 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operation is changed, you must let your key District Director for exempt organizations, San Francisco, California, know so they can consider the effect of the change on your exempt status. Also, you must inform that office of all changes in your name or address.

You are not required to file Form 990, Return of Organization Exempt From Income Tax.

You are not required to file Federal income tax returns unless you are subject to the tax of unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Please use your employer identification number on all returns you file and in all correspondence with the Internal Revenue Service.

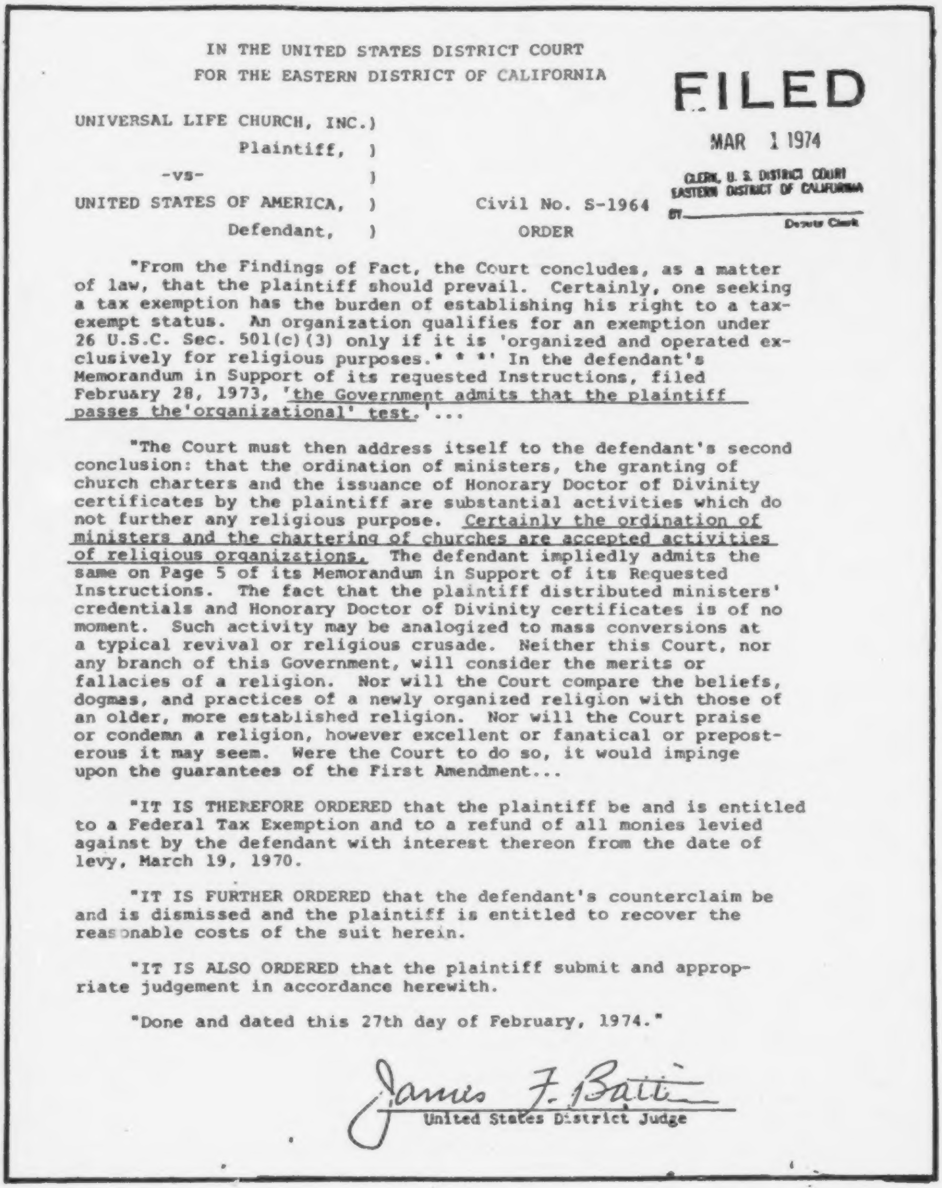
In addition, our ruling letter of December 31, 1974, is hereby modified in so far as it is inconsistent with this ruling.

Please keep this ruling letter in your permanent records.

Sincerely yours,

Jeanne S Gessay

Jeanne S. Gessay
Chief, Rulings Section 1
Exempt Organizations
Technical Branch



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FILED
MAR 1 1974
CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY ______ Deputy Clerk

UNIVERSAL LIFE CHURCH, INC.)
Plaintiff,)
-vs-)
UNITED STATES OF AMERICA,) Civil No. S-1964
Defendant,) ORDER

"From the Findings of Fact, the Court concludes, as a matter of law, that the plaintiff should prevail. Certainly, one seeking a tax exemption has the burden of establishing his right to a tax-exempt status. An organization qualifies for an exemption under 26 U.S.C. Sec. 501(c)(3) only if it is 'organized and operated exclusively for religious purposes.* * *' In the defendant's Memorandum in Support of its requested Instructions, filed February 28, 1973, 'the Government admits that the plaintiff passes the 'organizational' test.'...

"The Court must then address itself to the defendant's second conclusion: that the ordination of ministers, the granting of church charters and the issuance of Honorary Doctor of Divinity certificates by the plaintiff are substantial activities which do not further any religious purpose. Certainly the ordination of ministers and the chartering of churches are accepted activities of religious organizations. The defendant impliedly admits the same on Page 5 of its Memorandum in Support of its Requested Instructions. The fact that the plaintiff distributed ministers' credentials and Honorary Doctor of Divinity certificates is of no moment. Such activity may be analogized to mass conversions at a typical revival or religious crusade. Neither this Court, nor any branch of this Government, will consider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Court to do so, it would impinge upon the guarantees of the First Amendment...

"IT IS THEREFORE ORDERED that the plaintiff be and is entitled to a Federal Tax Exemption and to a refund of all monies levied against by the defendant with interest thereon from the date of levy, March 19, 1970.

"IT IS FURTHER ORDERED that the defendant's counterclaim be and is dismissed and the plaintiff is entitled to recover the reasonable costs of the suit herein.

"IT IS ALSO ORDERED that the plaintiff submit and appropriate judgement in accordance herewith.

"Done and dated this 27th day of February, 1974."

James F. Battin
United States District Judge

United States Tax Court

WASHINGTON, D.C. 20217

DANIEL M. KELLMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 9314-79

SUBPOENA DUCES TECUM

To Daniel M. Kellman
P.O. Box 383
Chugiak, Alaska 99567

YOU ARE HEREBY COMMANDED to appear before the United States Tax Court

(or the name and official title of a person authorized to take depositions)

at 10:00 A.M. (Time) on the 16th (Date) day of June, 1980 (Month)

at Courtroom, U.S. District Court, Federal Bldg., U.S. Courthouse, 701 " St. Anchorage, AK (Place)

then and there to testify on behalf of respondent (~~Petitioner~~) or (Respondent) in the above-entitled case,

and to bring with you the documents and records listed on the attached sheet.

(Use reverse if necessary)

and not to depart without leave of the Court.

Date June 11, 1980

WAYNE R. APPLEMAN
Attorney
Attorney for (~~Petitioner~~) (Respondent)

B.O. Lainton (Name)

DEPUTY CLERK (Title)

RETURN ON SERVICE

The above-named witness was summoned on the .... day of ...., 19.....
at .... by delivering a copy of this subpoena to h........ and, if a witness for the petitioner, by tendering fees and mileage to h........ pursuant to Rule 148 of the Rules of Practice of the Tax Court.

Dated ....

Signed ....

Subscribed and sworn to before me this .... day of ...., 19.....

FORM 5
Nov. 1973

(Name and Title)

[SEAL]

GPO: 19—O-[illegible]

In re: Daniel M. Kellman
Docket No. 9314-79

1. All lists or records of members in the Universal Life Church of Snow for 1976 and 1977.

2. All minutes and minute books of shareholders and/or director meetings for the Universal Life Church of Snow for 1976 and 1977.

3. All bank records, including deposit slips, canceled checks, and monthly statements for bank accounts maintained by the Universal Life Church of Snow for 1976 and 1977, together with all other records documenting cash receipts and disbursements by the Universal Life Church of Snow for 1976 and 1977.

4. All records of the names and addresses of persons who have been officers, directors, trustees, or ministers of the Universal Life Church of Snow during the period January 1, 1976 through December 31, 1977.

If The IRS is
Auditing my Personal Return
What Right Do They have
To Ask me For A list of
members OF my church?

Pam - please assign to Louise Wilson -

Louise. - this one will need a little special attention. this was [illegible] particular type. I would like you to write a polite but firm letter indicating what services you will need and that it was his obligation to provide through.

If after 2 attempts he fails to respond, come & talk to me. the President will receive all the normal courtesies - no more, no less.

Leick CS
12/3.

#1 2-2-76 confid.

STATEMENT OF JAMES PITTS

Senator **Abdnor**. Mr. James Pitts.

Mr. Pitts, you have a statement?

Mr. **Pitts**. Yes sir, I do.

Senator **Abdnor**. Thank you, Mr. Pitts. We welcome you to the committee and again, as I said to previous witnesses, your entire statement will be made part of the record. You can handle that any way you care.

Mr. **Pitts**. Thank you, sir. I appreciate that very much.

CONSTITUTIONAL PRINCIPLES

I am here not because of any harassment by the IRS directly. I think that's probably an interesting situation. I've never had an encounter with the IRS. My concerns are simply those of observing what has happened to other people. Maybe after today I will meet them head on but at this point, it hasn't been that way.

Somewhere early in my life I studied the Constitution in school and then as I became a lieutenant to go to Vietnam, I was forced to, at that time—though I went willingly actually—to take an oath swearing to uphold and defend the Constitution of the United States of America, an oath similar to that taken by all Government employees, and particularly the IRS. My problem is I took that oath seriously and today I have seen on numerous occasions my fellow citizens threatened, coerced, intimidated by the IRS and I feel like the IRS, of all organizations of the United States, is probably the one most feared by the American citizen. It's based on that fear that I became concerned about the IRS because I feel no American citizen should live in fear of his Government and I began to ask quesitons of myself, why are people in fear of the IRS, and what is the IRS doing that's causing people to fear it?

As I basically got into the Constitution, it became obvious to me that the IRS violates basic principles in the Bill of Rights. The laws that the IRS execute and inflict upon the American people violated the Constitution of the United States. I can't understand how an organization like this can be allowed to continue. I do not understand how we, as Americans, unless there is so much power in the IRS today that we fear it completely—and I have heard many stories, including cover-ups of murder and everything else that has been able to be affected by IRS agents because they have power over not only private citizens, but Senators, Congressmen and judges out of a fear of audits and the incredible amount of problems that can create in a person's life, virtually to destroying them financially; throwing them out of their home and seizing what property they have; and most often witout due process. I've heard stories recently in Colorado of the seizure of houses. A family in Maryland that had everything they owned seized and the problem that Mr. Egger, head of the IRS always seems to have, is he says tax protestors should all be thrown in jail because they make spurious constitutional arguments. To me there's no such thing in America as a spurious constitutional argument.

Any American citizen today who is willing to read the Constitution, and then much less get up and defend that Constitution, should be a hero in this country because that document is all that stands between us and being another country like Russia. As I look at the IRS violating what I see first, freedom of speech, they force people to provide information. If I go out and rob a Qwik Stop store, the first thing that's read me is the *Miranda* decision, based on the first amendment. yet every year people are forced to file information to the IRS which then leaves them wide open under the fifth amendment. They are providing information to the IRS which then, because they sign a perjury statement, allows them to be criminally prosecuted for any errors they make and what I've read recently and the IRS claims, they can find errors in 99 percent of all returns; that only about 80 percent of the time the information they give you is correct—I'm sorry gentlemen, I'm not following that. I'm just addressing something separately.

And that a public interest research organization when they presented the documentation for one taxpayer to eight different IRS officers was given different taxes due from a return to $800 in taxes due. I can see how no American would be able to fill out a proper return. Yet, you're signing under penalty of perjury offense that you're providing accurate information.

RIGHTS AGAINST SEARCHES AND SEIZURES

Also under the fourth amendment, it says Americans have the right to be secure in their papers against unreasonable searches and seizures and that no warrant shall be issued but upon probable cause. It would seem to me that each year we're being forced to provide our papers and our documentation to the Government without warrant and without probable cause. I guess the bottom line of what I'm trying to say is that as an American citizen I have taken an oath to defend and protect the Constitution. I think all of you have taken the same oath. And I think at some point, and we are probably reaching that point rapidly, the American people are going to be faced with a revolt or change in the IRS laws. I know I've been brought about as a peaceful citizen to that position in my own mind right now. I cannot live with an organization which harasses my fellow man. In Germany they called it "die kristalnacht" when the secret police came and broke in people's windows and doors, then dragged them off because they resisted tyranny. And I know that my American citizens friends today live in that same fear of that thing happening to them; the seizure of their property, the tearing up of their homes and that cannot exist in America or America ceases to exist. And I suggest to Mr. Egger, the head of the IRS, when he again calls constitutional arguments spurious questions, that he realize that in the short run it may provide additional power to him as an individual to ride roughshod over the rights of American citizens but that someday all people fall from power and that the document, the Consitution of the United States, is all that stands between us and becoming a Communist or unfree nation. That that document may one day be very well all that stands between him and his night of glass, as the Germans used to say. I have never been so deeply concerned about anything in my life as I am about what the IRS is doing to my fellow citizens and I can only pray that the strength lies in the Senate and what President Reagan is trying to do; that we get back to a just tax law which does not cause people to become criminals; which does not cause people to lie; which does not breed an organization which is as unAmerican as any organization that's ever existed in my opinion. Thank you gentleman.

Senator **Abdnor**. Thank you Mr. Pitts. Have you had harrassment on your own?

Mr. **Pitts**. No, sir, I've never been harassed, nor bothered. I happen to very deeply believe in the U.S. Constitution.

Senator **Abdnor**. You did make mention that Mr. Egger said he wants to put all tax protestors in jail.

Mr. **Pitts**. Sir, I read that in a newspaper article in a newspaper called the Spotlight. Now, people may say that's a right-wing paper, but it was quoted and I can only rely on what I read there. It said Mr. Egger was testifying before Congress on tax questions. He said that the leaders of the tax protest movement should be jailed and that the spurious constitutional questions which they brought up were irrelevant essentially.

That is not a quote sir, but that is essentially what I read in the article and it bothered me that anyone could think that any constitutional question brought up by a citizen of this country could be spurious. I think we're all bound by some duty to preserve freedom. Freedom is not free in my opinion. I think the average American thinks it is, but I think we've all got a duty to fight for it. I think the normal state of man if you want to look around the world is to be enslaved and I don't plan to be a slave.

Senator **Abdnor**. Thank you. Does anyone have any questions? If not, we thank you.

Mr. **Pitts**. Thank you.

[Reference material relating to James Pitts follows:]

SUBMITTED MATERIAL OF JAMES PITTS

THE PROBLEMS WHICH AMERICA FACES TODAY ARE DIRECTLY RELATED TO THE SOCIALISTIC POLICIES OF THE U. S. GOVERNMENT WHICH ARE DESTROYING INDIVIDUAL FREEDOM AND PARTICULARLY THE INCENTIVE OF PRODUCTIVE FREE INDIVIDUALS. THERE IS NO FAILURE OF THE FREE ENTERPRISE SYSTEM, IT IS RATHER THAT YOUR POLICIES AS LEGISLATORS HAVE MADE IT SO "LESS FREE" AS TO ENCOURAGE THOSE WHO WOULD NOT WORK AND DISCOURAGE THOSE WHO WOULD. NEVER HAS ANY MAN OR WOMAN I HAVE WITNESSED USING FOOD STAMPS BEEN ANY WAY DISABLED. ONE IN TEN AMERICANS NOW DEPENDS ON THE GOVERNMENT FOR THOSE STAMPS. SINCE THE GOVERNMENT CAN CREATE NO WEALTH, IT MUST TAKE IT FROM ONE CITIZEN TO GIVE IT TO ANOTHER. THE METHOD IN WHICH THE GOVERNMENT TAKES THAT WEALTH IS IN MANY WAYS MORE INSIDIOUS THAN THE ACTUAL TAKING.

I TOOK AN OATH TO "SUPPORT AND DEFEND THE UNITED STATES CONSTITUTION AGAINST ALL ENEMIES FOREIGN AND DOMESTIC" AS I BECAME A LIEUTENANT IN THE U. S. ARMY AND WAS SENT TO VIETNAM. AN OATH AT LEAST SIMILAR TO THAT TAKEN BY YOU AS PUBLIC SERVANTS AND BY THE I. R. S. IN PARTICULAR. I HAVE AND CONTINUE TO FULLY SUPPORT THAT OATH. I BELIEVE IN THE AMERICAN PRINCIPLES AS OUTLINED BY OUR FOREFATHERS IN 1776 AND 1789 WHICH FINALLY MADE MEN FREE. FOREFATHERS WHO GAVE THEIR LIVES, WEALTH AND FAMILY TO FOMENT A REVOLUTION TO OVERTHROW TYRANNY. FOR ONCE IN HISTORY THE LEADERS

OF A REVOLUTION DID NOT MAKE THEMSELVES KINGS AND DICTATORS BUT RATHER GAVE THE NEW COUNTRY TO THE PEOPLE AND CHARGED THOSE PEOPLE TO KEEP AND PROTECT THEIR HARD WON FREEDOM." ... IF YOU CAN KEEP IT." BENJAMIN FRANKLIN SAID. I INTEND TO KEEP IT.

TODAY, I AM DEEPLY DISTURBED TO HEAR OF THE NUMEROUS AND CONSTANT VIOLATIONS OF THE UNITED STATES CONSTITUTION BY THE INTERNAL REVENUE SERVICE. WE HAVE ALLOWED TO GROW IN OUR MIDST A NAZI-GUESTAPO-LIKE ORGANIZATION WHICH USES COERCION, LIES, THREATS, AND FEAR TO INTIMIDATE AMERICAN CITIZENS. THE GERMANS CALLED IT "DIE KRISTALNACHT", THE NIGHT OF GLASS IN WHICH PEOPLE LEARNED WHAT IT MEANT TO LOSE THEIR FREEDOM. THE NIGHT WHEN THE SECRET POLICE SMASHED THEIR WINDOWS AND DOORS AND DRAGGED OFF THOSE WHO WOULD NOT YIELD TO TYRANNY. TYRANNY IS ALIVE AND WELL TODAY IN THE GULAG'S OF RUSSIA, THE SLAVE LABOR FARMS OF CHINA AND AT THE I.R.S. AMERICANS TODAY WHO RESIST TYRANNY LIVE IN FEAR OF THE "NIGHT OF GLASS". I KNOW THAT. THAT FEAR HAS STRUCK ME OFTEN.

THE I.R.S. EMPLOYS ARMED SEACHES, HIT LISTS, THREATS, AND INTIMIDATION. IT SEIZES PROPERTY WITHOUT WARRANT, IT SMASHES WINDOWS IN PEOPLES CARS AND DRAGS THEM OUT ONTO THE STREET, IT THROWS THEM OUT OF THEIR HOMES AND USUALLY WITHOUT REGARD TO DUE PROCESS.

ONCE ON A COOL JULY MORNING, I WAS RIDING DOWN QL15, A HIGHWAY IN VIETNAM PASSING THROUGH THE BINH-SONH RUBBER PLANTATION. IT WAS 5:00 A.M. AND THERE WERE THREE OF US IN THE JEEP. WE ROUNDED A CORNER AT 50 MPH AND CAME FACE TO FACE WITH A VIET CONG ROAD BLOCK. IN THAT SECOND I KNEW ABSOLUTE FEAR. THE FEAR OF DEATH. BUT THE SUN WAS SHINING THROUGH THE RUBBER TREES AND THE VIET CONG FEELING INSECURE IN THE LIGHT OF DAY HAD APPARENTLY PULLED OUT JUST MINUTES BEFORE. EVIL EXPOSED TO THE LIGHT HAD DISIPATED. I NEVER WANT TO KNOW THAT VIETNAM KIND OF FEAR AGAIN.

FEAR. A WORD WHICH SHOULD BE FOREIGN TO THE CITIZENS OF A FREE AND JUST COUNTRY. YET AMERICANS FEAR THE GUESTAPO LIKE I.R.S. THE REASON FEAR MUST BE USED CAN ONLY BE THAT THE LAWS OF THE I.R.S. ARE UNJUST AND TRULY UNCONSTITUTIONAL. KNOWLEDGE OF THE CONSTITUTION WILL HOPEFULLY BE THE SUNSHINE WHICH WILL EXPOSE THE EVIL OF THE I.R.S. AND SEE IT DISIPATED.

ON 3 AUGUST 1981, THE OFFICE OF SENATOR TED STEVENS CALLED ME FOR MY SOCIAL SECURITY NUMBER. WHY? BECAUSE THE I.R.S WANTED IT. TO CORRECTLY IDENTIFY ME. I AM SURE FOR THEIR LIST - THEIR HIT LIST. A U.S. CITIZEN GOING TO MAKE PUBLIC TESTIMONY AND NOW I TESTIFY WITH THE ACCUSTOMED RING OF FEAR. I COME TO CALL

THE I.R.S. TO TASK FOR VIOLATING THE U.S. CONSTITUTION AS I SHOULD AS AN AMERICAN, YET THEY WILL SEEK TO TAKE REVENGE UPON ME.

MR. EGGERS, I.R.S. DIRECTOR HAS SAID THAT HE WISHES TO PUT ALL "TAX PROTESTORS" IN JAIL BECAUSE THEIR ARGUMENTS AGAINST THE TAX LAWS ARE "SPURIOUS CONSTITUTIONAL ARGUMENTS". FOR GOD'S SAKE, THEIR SHOULD BE NO SUCH THING AS A SPURIOUS CONSTITUTIONAL ARGUMENT. ANY CITIZEN WHO TAKES THE TIME TO STUDY HIS CONSTITUTION AND DEMAND THAT THE GOVERNMENT OF BY AND FOR THE PEOPLE LIVE BY THAT CONSTITUTION SHOULD BE A HERO. TOO MANY AMERICANS DON'T CARE. THEY THINK FREEDOM IS FREE, A NATURAL STATE FOR MAN. UNFORTUNATELY THE REVERSE IS TRUE. ALWAYS SOME MEN SEEK POWER AND CARE NOT OF THE FREEDOM OF THEIR FELLOW MAN. MOST "TAX PROTESTORS" ARE NOT PROTESTING PAYING TAX. THEY ARE PROTESTING BEING FORCED TO GIVE UP THEIR CONSTITUTIONAL RIGHTS. AND IT FOLLOWS THAT ANY TAX LAW WHICH MAKES THEM DO SO CAN ONLY BE ILLEGAL.

MR. EGGERS SHOULD ENCOURAGE THAT CONSTITUTIONAL QUESTIONS BE ANSWERED. IF IT IS DETERMINED THAT TAX LAWS VIOLATE THE CONSTITUTION THEY MUST BE ABOLISHED. I ADVISE MR. EGGERS THAT HE MAY IN THE SHORT RUN HAVE POWER TO GAIN BY VIOLATING THE CONSTITUTIONAL RIGHTS OF AMERICANS. BUT THE DAY MAY COME WHEN HE FALLS FROM POWER AND IF HE HAS HELPED TO DESTROY THE DOCUMENT WHICH

KEEPS US FREE THEN HE AND HIS FAMILY MAY FACE THEIR "NIGHT OF GLASS".

IT IS MY STRONG OPINION THAT THE I.R.S. LAWS VIOLATE THE IST, IVTH, AND VTH AMMENDMENTS TO THE U.S. CONSTITUTION.

IST. FREEDOM OF SPEECH – THE RIGHT TO SPEAK OR REMAIN SILENT – IS GUARANTEED TO MURDERERS AND ROBBERS UNDER THE MIRANDA DECISION BASED ON THE FIRST AMMENDMENT. WHY THEN MUST A TAX PAYER PROVIDE INFORMATION TO THE I. R. S. OR BE INDICTED FOR FAILURE TO FILE? I ASKED THE U.S. ATTORNEY FOR ALASKA IF ANY GOVERNMENT AGENCY COULD FORCE ME TO PROVIDE THEM WITH INFORMATION. HE SAID "NO." I REPEAT HE SAID "NO". WHERE ARE YOU MR. GONZALEZ?

IVTH THE RIGHT TO BE SECURE IN ONES PAPERS AGAINST UNREASONABLE SEACHES AND SEIZURES. AND NO WARRANT SHALL ISSUE BUT UPON PROBABLE CAUSE... IT WOULD SEEM TO ME THAT A WARRANT FOR CAUSE MUST BE ISSUED BEFORE MY RECORDS MAY BE TAKEN. NOT AT THE I. R. S.

VTH ... NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF." WHEN SIGNING FORM 1040, I BECOME LIABLE FOR CRIMINAL PROSECUTION BASED UPON INFORMATION PROVIDED ON SAID FORM.

I AM TESTIFYING AGAINST MYSELF.

YET I.R.S. ADMITS THAT ERRORS CAN BE FOUND IN 99.9% OF ALL RETURNS, THAT INFORMATION THEY GIVE ME IS NOT ALWAYS ACCURATE (ONLY 79% OF THE TIME) AND A PUBLIC INTEREST RESEARCH GROUP HAS FOUND THAT WITH THE SAME TAXPAYER

DATA SUBMITTED TO 8 DIFFERENT I.R.S. OFFICES, 8 DIFFERENT TAXES DUE WERE FOUND BY I.R.S. RANGING FROM REFUND TO $800 DUE. HOW CAN ANYONE BE EXPECTED TO FILL OUT AN ACCURATE FOR AND BE EXEMPT FROM PROSECUTION WITH 28 VOLUMES OF TAX LAWS?

FURTHER WITH THE I.R.S. I AM GUILTY UNTIL PROVEN INNOCENT. THEY MAY SEIZE MY PROPERTY WITHOUT DUE PROCESS OF LAW.

ATTACHED IS A REPRINT OF AN ARTICLE BY ROBERT McCURRY WHICH EXPLAINS IN DETAIL THE THREAT OF THE I.R.S.

FEAR. I WILL NOT AS AN AMERICAN LIVE IN FEAR OF MY GOVERNMENT. I HAVE COMMITTED NO CRIME AGAINST PEOPLE. I ADVISE I.R.S. TO REFORM OR ANTICIPATE REVOLT BY THOSE WHO LOVE THIS COUNTRY AND FREEDOM. I WENT TO VIETNAM AND NEARLY GAVE MY LIFE FOR MY COUNTRY. DO YOU MR. EGGERS OR YOUR LACKEYS AT THE I.R.S. THINK I WOULD DO LESS HERE? THE CONSTITUTION IS ALL I HAVE TO DEFEND MY CHILDREN FROM TYRANNY. "RESISTANCE TO TYRANNY, IS OBEDIENCE TO GOD" SAID THOMAS JEFFERSON.

I ADVISE THE I.R.S. THAT I PLEDGE MY LOYALTY TO THE U.S. CONSTITUTION AND

THE PRINCIPLE OF FREEDOM TO MY DEATH.
NO MAN SHALL DENY ME MY GOD GIVEN
RIGHTS.

LIVE FREE OR DIE, MR. EGGERS,
AND BY GOD I WILL, I SWEAR IT.

STATEMENT OF HILLARD T. ROACH

Senator ABDNOR. I'm sorry, I skipped over Mr. Roach. Mr. Roach, are you here with us today? I want you to know we haven't forgotten you.

Mr. Roach, we welcome you to the committee and your testimony, we assure you that your entire statement will be made part of the record. You may proceed however you wish.

Mr. ROACH. Thank you, Commissioner and Senators. I thought at the outset I would present this committee with some of my background to lend as much credibility and to narrow the connotation of my testimony as possible.

Senator STEVENS. Pull that mike up a little closer somehow.

Mr. ROACH. I have been a resident of Alaska since 1927. My father came to Alaska on a permanent basis in 1916, so our family has resided here as citizens and taxpayers for some 65 years. At the time of his retirement he was the oldest practicing lawyer in the State of Alaska in point of service and when Anchorage grew to the size that it required a full-time judge, my father was accorded that honor by his peers. I've always been a registered voter of Alaska and was absent during World War II for education purposes and career experience. I have never been convicted of a crime and have not even been accused of any criminal act in my entire life. I have never been requested by the IRS to appear for an audit or am I a member of any group that advocates tax resistance. For the past 17 years I have conducted my own business in private investment.

EMPLOYEE TAXES

Correspondence commenced from the IRS in mid-August of 1979. I took these letters to my bookkeeper who said her records showed the employee taxes had been sent in time. Even though I sent in photocopies of my ledger sheets showing the taxes had been sent, no resolution was made. I eventually wrote to the tax ombudsman in Washington, D.C., relating the frustrating experience I was enduring in trying to pay my taxes. Eventually I was shuffled to a Mrs. Harris who made an appointment with me. I told her all of my problems and how they occurred. She took all this information in a notebook. A couple of months later I received word that she had done her part and to acknowledge that her mission had been accomplished by signing a letter. I did not sign it as nothing had been accomplished. I later learned that she was an IRS agent who have been assigned to my case.

DELAY IN RECEIPT OF CREDITS

About a month later, I received a letter from the Anchorage office that I had a credit in excess of $15,000. I then went to the agent and asked when I would receive my tax refund. It would only take a couple of weeks I was told. I returned again in about a month and learned that the computer was being repaired. My next visit gleaned the information that someone had removed my file from the computer in Ogden. I have never learned who that someone was. Then I was told that a couple of years' returns had not been filed. I related this new information to my accountant who immediately made copies from the files and personally delivered them. Now, the above-mentioned credit letter was mailed on June 23, 1980, or March 7, 1980. Mrs. Patricia Hitch levied against my bank account for recovery of moneys due the IRS. My accountant has inquired about a resolution and my attorney also made a personal appearance. The IRS has kept the money despite the fact that they were informed that their action ran counter to the law. My credit due is many times greater than the contested amount that they claim is due them. It is my belief that they force a taxpayer into court to sue for collection. The legal fees eat up most of it so that many taxpayers chuck it up to a loss and go home to lick their wounds. When I received a small residence from my father's estate it had an appraisal that was made shortly before I inherited it. Some 2½ years after probate, the IRS came to me for an additioal $475 because they claimed the property was undervalued. I told my accountant I could prove the executor's value was correct because of similar sales nearby. He told me it would cost me $550 to go to court, "so you'll end up losing $100 because you can't sue the IRS for their false actions."

I have introduced into my evidentiary file, three articles published in the Reader's Digest. The first article relates what is wrong with the tax collection system authored by former Commissioner Mortimer Caplin. You will notice that none of his recommendations were followed until this week and that was done not by the IRS, but by the National Legislature. The second article deals with tyranny which agents use to collect revenue. I have seen in publication reports several times since 1967, that lead me to believe that it's still business as usual. The third article which was published in September 1968 in the Reader's Digest was prepared after 3 years of perusal of official records conferring with IRS agent themselves, and investigation of the cases from the victims and their attorneys. If the documentation had not been presented with this account, one would say this could not possibly happen in America. Unfortunately, it does though, and it has grown to such obscene proportions that thousands upon thousands of citizens are using any means they can to thwart the IRS. In many quarters the IRS is called the American NKD.

I subscribe to many financial publications in order to keep abreast of conditions in my work field. One such is called Personal Finance and I have circled the answer that the editor gave a subscriber. He tells how the IRS disregards congressional orders and I must ask myself this: Will the IRS be reformed even if Congress enacts taxpayer protection reform? Can we make agents responsible for illegal acts? Can a taxpayer be reimbursed for costs, loss of wages, and dreadful mental anxiety that he is now compelled to endure. We cannot look to any other entity than the Federal Congress for just and equitable treatment. We must create a tax system as well as tax collection that will not force otherwise honest and decent Americans to commit less than honest acts dealing with an agency of our own Government. I know of no sensible person who objects to taxation, but reports show that there are tens of thousands who resent how it is collected. I am most grateful for the opportunity that you have given me in my testimony.

Senator **ABDNOR**. Thank you, Mr. Roach. That's—we appreciate your statement and the problems you're having and I guess it seems to be running a pattern here. This certainly will be made part of the record and we thank you very much.

Do you have anything you'd like to ask?

DISPOSITION OF $15,000 CREDIT

Senator **STEVENS**. Whatever happened to the $15,000 refund you were supposed to get?

Mr. **ROACH**. All right, Senator. At one time they did send me a check for a little over $8,000 saying it was the complete amount due that I had coming. I then took it back to the IRS and they said, "Oh, you shouldn't have even gotten that much, so don't cash it." I said, "Well, I won't." And so I took it back to the office, photocopied it and then mailed it back to them.

Senator **STEVENS**. You got a letter saying you had a credit in excess of $15,000?

Mr. **ROACH**. Yes, sir, and I still haven't a penny of it at all.

Senator **MURKOWSKI**. You sent the check back and that was the last you heard?

Mr. **ROACH**. I haven't received another word from them, Frank.

Senator **MURKOWSKI**. I certainly welcome your constructive testimony, Mr. Roach.

Senator **STEVENS**. I'm interested in this attachment. The credit letter was in June, but you say on March 7, Patricia Hitch levied against your bank account for recovery of moneys due the IRS. Is that of this year or last year, of 1980 or 1981?

Mr. **ROACH**. That was last year. Now what happened was that I maintain a corporate office down here in Anchorage, and I have naturally my own personal tax returns as well as the corporate returns. And I employed a new bookkeeper for a period of 1 year, I think it was, and during the time that she was doing my work and sending in the taxes to the Government in Ogden, apparently four of those quarterlies did not reach their destination and I never was aware of that. When I write in my ledgers why a check has been written, why so much is deducted from my account and it's carried that way until the check does return and then it's notated in the final ledger. I wasn't aware that these checks had not been credited to the account. Now these were employee taxes and until I received a letter from them, and then I sent numerous copies back from photocopies from my ledgers showing that the checks had been sent in.

Mr. Egger made a point that I would like to argue with just for the moment here where he said taxpayers request written confirmation or replies, and it's been awfully hard for me to get written replies. I write in because I felt that if I do this, then I can later substantiate that I have made legitimate inquiries. Then they will call back on the phone and if some controversy comes up, well, we don't remember about that, or we didn't say that, or something or other, and I think the written word is very important. Of course, it can be overdone, I admit, but in my case, it hasn't been. So suddenly I came into my office and Mrs. Hitch was there with this summons and I said, "I haven't received any word that there has been any altercation that has gone this far." She made no comment, she made no further comment at that time, and I took the matter to my accountant and so he said, "Well you only have a few days in which to go down and file a protest." So I had a reason to go down to the IRS to talk to Mrs. Patnoe, who was handling my personal returns and Mrs. Hitch came out and she said, "Well, you don't have to protest now, because we won't need your bank accounts." I think that what provoked me worst of all, was that on the one occasion that I was down there, Mrs. Hitch at this time said that, "I've examined your bank records and," she said, "you're nothing but a common little crook." And I've been up here all my life. I don't like it.

Senator STEVENS. Who said that?

Mr. ROACH. Mrs. Hitch. I don't have that coming.

Senator ABDNOR. Thank you very kindly.

Mr. ROACH. Thank you, sir.

[Reference material relating to Hillard T. Roach follows:]

SUBMITTED MATERIAL OF HILLARD T. ROACH

CAPTAIN, USMM (RET.)

August 5, 1981

To: The U.S. Senate Appioriations
Subcommittee on the Treasury.

Chairman: Honorable James Abdnor, S.D.

Senators: Ted Stevens, Alaska
Dennis DeConcini, Arizona
Frank Murkowski, Alaska

Place: Federal Office Building
Anchorage, Alaska

Witness: Hillard T. Roach
Captain, USMM (RTD)

Honorable Sirs:

To lend as much credibility to my testimony as possible, I would like to express briefly my background and qualifications.

I have been a resident of Alaska since 1927. My father came to Alaska on a permanent basis in 1916. At the time of his retirement, he was the oldest practising lawyer in the State of Alaska in point of service. When Anchorage grew to the size that it required a full time judge, my father, L.D. Roach, Esq., was awarded that honor by his peers. I have always been a registered voter of Alaska and, was only absent during W.W. II, for education purposes and, career experience. I have never been convicted of a crime and have not even been accused of any criminal act in my entire life. I have never been requested by the I.R.S. to appear for an audit, or am I a member of any group that advocates tax resistance. For the past seventeen years, I have conducted my own business in private investments.

Correspondence commenced from I.R.S. in mid-August of 1979. I took the letters to my bookkeeper who said her records showed the employee taxes had been sent in in time. Even though I sent in photo copies of my ledger sheets showing the taxes had been sent no resolution was made.

I eventually wrote to the tax ombudsman in Washington D.C. relating the frustrating experience I was enduring in trying to pay my taxes. Eventually I was shuffled to a

Mrs. Harris who made an appointment with me. I told her all of my problems and how they occurred. She took all this in formation in a note book. A couple of months later, I received word that she had done per part and to acknowledge that her mission had been accomplished by signing a letter. I did not sign it as nothing had been accomplished. I later learned that she was an I.R.S. agent who had been assigned to my case.

About a month later, I received a letter from the Anchorage office that I had a credit in excess of $15,000. I then went to the I.R.S. agent and asked when I would receive my tax refund. It would only take a couple of weeks. I returned again in about a month and learned that the computer was being repaired. My next visit gleaned the information that "someone" had removed my file from the computer in Ogden. I have never learned who that someone was. Then I was told that a couple of years returns had not been filed. I related this new information to my accountant who immediately made copies from the files and personally delivered them. The above credit letter was mailed on June 23, 1980. On March 7, 1980, Patricia Hitch levied against my bank account for recovery of monies due the I.R.S. My accountant has enquired about a resolution and my attorney also made a personal appearance. The I.R.S. has kept the money despite the fact that they were informed that their action ran counter to the law. My credit due is many times greater than the contested amount they claim is due them.

It is my belief that they force a tax payer into court to sue for collection. The legal fees eat up most of it so many tax payers chalk it up to a loss and go home to lick their wounds. When I received a small residence from my father's estate, it had an appraisal that was made shortly before I inherited. Some 2½ years after probate, the I.R.S. came to me for an additional $475.00 because they claimed the property was undervalued. I told my accountant I could prove the executors value was correct because of similar sales nearby. He told me,"it would cost you $550.00 to go to court so you will end up losing a hundred dollars because you can't sue the I.R.S. for their false actions."

I have introduced into my evidentiary file, three articles published in the Reader's Digest. The first article relates what is wrong with the tax collection system authored by former commissioner Mortimer Caplin. You will notice that none of his recommendations were followed until this week and that was done not by the I.R.S. but by National Legislature. The second article deals with the tyranny which agents use to collect revenue. I have seen in publication reports, several times since 1967 that leads me to believe that its still "business as usual." The third article which was published September , 1968, was prepared after three years of perusal of official records, conferring with the I.R.S. agents themselves and investigation of the cases from the victims and their attorneys. If the documentation had not been presented with this account one would say "this could not possibly happen in America" Unfortunately, it does though and it has grown to such obscene proportions that thousands upon thousands of citizens are using any means they can to thwart the I.R.S. In many quarters , the I.R.S. is called the American N.K.D.

I subscribe to many financial publications in order to keep abreast of conditions in my work field. One such is Personal Finance and I have circled the answer that the editor gave a subscriber. He tells how the I.R.S. disregards Congressional orders. I must ask myself this: Will the I.R.S. be reformed even if congress enacts taxpayer protection reforms. Can we make agents responsible for illegal acts? Can a taxpayer be re-imbursed for costs, loss of wages, and dreadful mental anxiety that he is now compelled to endure?

We cannot look to any other entity than the federal congress for just and equitable treatment. We must create a tax system as well as tax collection that will not force otherwise honest and decent Americans to commit less than honest acts when dealing with an agency of our own government. I know of no sensible person who objects to taxation but, reports show that there are tens of thousands who resent how it is collected.

I am most grateful for the opportunity you have given me to present my views.

Thank you,

HT Roach

H. T. Roach

Internal Revenue Service Department of the Treasury

Washington, DC 20224

Person to Contact:
Betty Martin
Telephone Number:
(202) 566-4936
Refer Reply to:
C:PRP
Date:

MAY 8 1980

Mr. H. T. Roach
Drawer 200, 99687
Wasilla, Alaska

Dear Mr. Roach:

Mr. Browning has asked us to acknowledge your letter dated April 16, 1980, regarding a difficulty you have had with the Collection Division.

We are forwarding your letter to the District Director of the Anchorage District Office. You will be contacted for further information so that we can pursue the matter and resolve it as soon as possible.

In the meantime, if you need further assistance, please let us know.

Sincerely yours,

Linda Martin

Linda Martin
Chief,
Problem Resolution Office

Rec'd May 20 '80
HTR

Internal Revenue Service **Department of the Treasury**

District
Director

310 K Street, Anchorage, Alaska 99501

H.J. Roach
Drawer 200
Wasilla, Ak 99587

Person to Contact: Georgia Harris
Telephone Number: Zenith 3700
Refer Reply to: Case #: 80-272
Problem Resolution Officer
Date: May 21, 1980

Dear Mr. Roach:

Your letter of April 16, 1980 to Mr. Browning, Taxpayer Ombudsman, has been forwarded to the District Director of the Internal Revenue Service in Anchorage. Mr. Berria, Director, has asked me to review your complaint in an effort to assist you.

To be able to research your problem would you please give me your social security number and a brief synopsis of the problem and with whom you have been working. An envelope has been enclosed for your convenience.

If you have any questions you may reach me at the above telephone number.

Sincerely,

Georgia Harris
Georgia Harris
Problem Resolution Officer

Internal Revenue Service **Department of the Treasury**

District
Director

P.O. Box 1500, Anchorage, Alaska 99510

Hilliard T. Roach
Drawer 200
Wasilla, Alaska 99687

June 23, 1980

Re: Form 1040, U.S. Individual Income Tax Return for
the year 1976, 1977, 1978, and 1979.

Dear Mr. Roach:

Following is a breakdown by year of the credits applied to your account and the returns received.

Form 1040, 1979 - - Siegle & Mendlowitz, P.C. in New York has advised me that this return was under valid extension through 06-15-80 and reflects no tax due.

Form 1040, 1978 - - Siegel & Mendlowitz, P.C. in New York has advised me that this return should be completed in approximately 2 weeks. Mr. Mendlowitz stated there will be no tax due for the period ending December 31, 1978. Internal Revenue Service records show a $5,500.00 credit balance for 1978. $3,000.00 was transferred from 1977 Form 1040, and a payment of $2,500.00 was made April 9, 1979.

Form 1040, 1977 - - This return was filed October 15, 1978. No tax due and the $3,000.00 estimated tax payment transferred to your 1978 Form 1040.

Form 1040, 1976 - - This return has not been received by the Internal Revenue Service. There are, however, several credits for tax due on 1976.

Estimated Tax Payment	04-15-77	$4,500.00
Payment w/Application for Extension	04-15-77	1,500.00
Subsequent Payment	04-15-77	9,700.00
TOTAL CREDIT		$15,700.00

I have received a copy of your Form 1040 for 1976 along with copies of your cancelled checks for the above payments. It is imperative, Mr. Roach, that you contact me. Its necessary that you sign this copy of 1976 Form 1040. It can not be processed without your signature and we are fast approaching the statute date which would bar the issurance of any refunds due you for 1976.

I have scheduled an appointment for you July 8, 1980, at 10:00a.m. Mr. Mendlowitz advised me that he would send you the original Forms 1040 for 1978 & 1979 for your signature and include instructions to file these returns with me. As ample time has elapsed for those returns to reach you, please bring them with you on July 8th.

Mrs. Hitch will also be available this date to assist you in solving your corporate tax problems.

Sincerely,

Arlene M. Pat

Arlene M. Patnoe
Revenue Officer

Form 2039-C
(Rev. 11-78)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Equestrian Acres Development Corporation 921 West 6th Avenue Suite 6 Anchorage, Alaska 99501

Internal Revenue District of Anchorage, Alaska

Periods Quarterly periods ended: March 31, 1979 and June 30, 1979.

The Commissioner of Internal Revenue

To Alaska Bank of Commerce
716 West 4th Avenue
At Anchorage, Alaska 99501
[illegible]

You are hereby summoned and required to appear before Patricia Hitch or Mary Romero, an officer of the Internal Revenue Service, to give testimony relating to the tax liability ~~or the collection of the tax liability~~ of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

Copies of all bank statements and canceled checks in your possession or control for the above named taxpayer for the period January 1, 1979 through June 30, 1979.

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street Room 201 Anchorage, Alaska 99501 (907) 271-4286

Place and time for appearance:

at 310 K Street Room 201 Anchorage, Alaska 99501

on the 11th day of August, 19 80 at 9 o'clock A M.

Issued under authority of the Internal Revenue Code this 31st day of July, 19 80

Patricia Hitch — Revenue Officer
Signature of Issuing Officer — Title

Charles E. Piotz — Group Manager
Signature of Approving Officer (if applicable) — Title

Part C — To be given to noticee

Form 2039-C (Rev. 11-78)

STATEMENT OF STAN SIMPSON FOR DANIEL EMANS

Senator **Abdnor**. Stan Simpson.

Mr. Simpson, I'm sure—you have a statement, do you?

Mr. **Simpson**. Yes, sir. I want to thank you gentlemen for allowing me to appear here this morning. I'm appearing on behalf of Daniel Emans. Mr. Emans in 1980, January of that year was taken to trial here in Anchorage, and filed with criminal charges on three counts of filing fraudulent W-2 forms with his employer.

Judge von der Heydt dismissed all charges, before this could even go to the jury, it was such a fallacy in this trial. An IRS agent under sworn testimony actually figured Mr. Emans was entitled to 37 allowances during that trial on the blackboard where they had—during the proceeding of the trial. Arlene Patnoe, an IRS agent, was sworn in as an expert witness and did testify that nowhere in the IRS Code did it grant the power to demand that anyone substantiate what they filled out on a W-4 form according to the IRS Code. The IRS sends this out in their letters and they say you have to substantiate or we're going to disallow. Gentlemen, I'm not following this exactly, but I'm sure you get the gist of it. The IRS just arbitrarily disallows people's W-4 forms and there is really no rhyme or reason to it. It's always been signed under penalty of perjury, the form has, they never go through the legal proceeding of trying to disprove that perjury charge or any other thing. They just say, it's disallowed and you have to tell us why. And there is no rule, no law or anything pertaining to this.

W-4 FORM ALLOWANCES

Now the second fact of this is, Mr. Emans, shortly after he won the case in the Federal court, in fact it was 30 days to be exact, right after he was exonerated of all charges of filing this so-called fraudulent W-4 form, that the IRS did notify his employer and told him to hold out zero and no allowances, take all of the income tax you can out of that man's paycheck, because he doesn't deserve it. Well, in the Federal court they already determined that he was in fact entitled to 37 allowances on his W-4 form.

Senator **Stevens**. Thirty-seven?

Mr. **Simpson**. Thirty-seven, yes, sir. That was in Judge von der Heydt's court right here in town in 1980. If you'll look back about four pages, you'll see the case was A-79-74 criminal charges, January 28 and 29, 1980.

Senator **Abdnor**. Pardon me. Maybe I should know this, but you say 37 allowances. Specifically what's the allowance——

Mr. **Simpson**. Sir, the IRS Code says one allowance is equivalent to $1,000 anticipated loss or an anticipated figure that you will not owe a tax on during that year. So if he had $37,000 that he would not be—have to pay taxes on, then he would be determined to have an allowance of 37.

Senator **Abdnor**. Thank you.

Mr. **Simpson**. Yes, sir.

Daniel Emans has suffered great trauma and stress during that court trial and it did cost him substantially, loss of work monetarily, and any other way. And he has now received the same letters all over again from the IRS office, stating that they're going to disallow his W-4 forms that is still filed with 36 allowances and they say if he doesn't come back and substantiate all these again within 15 days, that they're going to disallow again, and hold tax money out of his paycheck when——

Senator ABDNOR. Well, when—had he just gone through this prior to this notice? When was that; what time?

Mr. SIMPSON. He went through court and 30 days after he was through the court procedure——

Senator ABDNOR. When did he go to court? How long ago was that?

Mr. SIMPSON. January 1980 and 30 days later they disallowed his W-4 form and told his employer to hold out taxes again. And now just recently, Mr. Emans has refiled another W-4 form with the same 36 allowances and as of June 22, 1981, they are starting the same harassment again by the same letters. It says, "We have received your W-4 and we are disallowing your allowances without your substantiation." And I feel personally that Mr. Emans did send in a letter stating his court case and stating that he did have all those allowances, the same in 1981 that he had in 1980, and the whole gist of this is, why after going through a court case, the trauma and the expense and all this, why should the IRS arbitrarily just jump right back in there and say, well, you know, we're going to disallow this and do it all over?

Senator STEVENS. Are you saying that this person, Daniel Emans, was entitled to 37 deductions——

Mr. SIMPSON. No, sir, allowances.

Senator STEVENS [continuing]. Exemptions?

Mr. SIMPSON. No, sir, not exemptions; allowances. Allowances according to the IRS' own code is $1,000 anticipated loss for that year. There is nowhere on the new W-4 form to put exemptions anymore. They have changed that form and it is all allowances. So if you have—say for example, if you have a known bill or a known thing that will be deducted from you tax 1040 form when you file your income tax and you know that that allowance is going to be, say for the top, it will be $2,000, that you could file as two allowances on your W-4 form and therefore would not have the tax withheld out of your paycheck. Why should you give it to them and then turn around and ask them to give it back at the end of the year when you know in advance that you're not going to owe it.

Senator ABDNOR. Are you—I'm just curious, Mr. Simpson. Are you representing the gentlemen as a——

Mr. SIMPSON. I'm his——

Senator ABDNOR [continuing]. Lawyer?

Mr. SIMPSON [continuing]. I'm his minister, sir. He's a member of my congregation and he asked me—he could not make it here today and he asked me and he has actually signed an affidavit to give me the authority to speak for him. We have talked considerably on this matter and he has asked me to speak in his behalf.

Senator ABDNOR. Fine. Will you leave the written material for the record? We have your testimony but we'd like to have a copy.

Mr. SIMPSON. Yes, sir. You have a copy of this material.

Senator ABDNOR. All right, thank you very, very much.

Mr. SIMPSON. Thank you, gentlemen.

[Reference material relating to Daniel R. Emans follows:]

MATERIAL SUBMITTED BY BISHOP STAN SIMPSON

TESTIMONY: IRS HEARING

Senator Ted Stevens
August 4, 1981
Anchorage, Alaska

HARASSMENT OF DANIEL R. EMANS AND OTHERS

Presented by Bishop Stan Simpson

FACT I

A. DANIEL R. EMANS - S.S.# 373-46-4805 - Wasilla, Alaska
Court Trial - A 79-74 - Criminal - January 28, 1980
Charged with three counts of filing a fraudulent W-4 Form

B. Jude Von Der Heydt dismissed all charges before it could go to the jury

C. IRS agent, under sworn testimony, figured Mr. Emans had 37 allowances he could claim instead of the 36 that he was claiming when court proceedings were brought against him.

D. Arlene Patnoe, "IRS Agent", sworn as an expert witness, did testify that nowhere in the IRS Code did it grant the power to demand that anyone substantiate what they filed on a W-4 Form, according to 3402 (F) (2) (A) & (B), as the IRS claimed in their letters. Nor could the IRS disallow the form as filed. It must prove perjury, as the form is signed under penalty of perjury.

FACT II

A. Shortly after he won the case with the IRS, his employer was notified by the IRS to disregard his W-4 Form and put him back to a single status claiming one withholding allowance. He is still trying to get his employer to honor a W-4 that he has signed as correct under penalty of perjury, because the IRS has informed his employer that his W-4 Form is not correct by their standards.

FACT III

A. Daniel R. Emans has suffered trauma and great stress in his court trial

B. He has also had substantial cost and loss of work connected with this trial

FACT IV

A. Daniel R. Emans is now being subjected to the same harassment by the IRS, pertaining to his withholding and W-4 information, that he was receiving prior to his court trial.

B. The IRS arbitrarily disallows any W-4 Form claiming over 9 allowances.
   1. IT IS A FACT that some families have over 9 children, not counting their other allowances.
   2. IT IS A FACT, in Alaska, that short working periods and special conditions merrit more than the normal allowances in many instances. Fishermen, for example, work very short periods of time during the year. They sometimes make very large amounts of money for this short period of time, but that must be spread over the entire year for living expenses.

IN SUMMARY:

MANY PEOPLE HAVE TOLD ME THEY ARE BEING HARASSED BY THE IRS. MOST ARE DISTRESSED OVER THE IRS'S POWER TO DISALLOW A PERSON'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW.

I FOR ONE, WOULD LIKE STRICTER RULES, THAT THE IRS MUST OBEY AND A CLEAR, CONCISE AND UNDERSTANDABLE CODE INSTEAD OF THE FARCE THAT IS NOW IN EFFECT - TODAY IT IS READ ONE WAY - TOMORROW ANOTHER. THE IRS WRITES IT'S OWN CODE AND THIS MUST BE STOPPED!

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Internal Revenue Service Center
Western Region

Department of the Treasury

Date: JUN 22 1981

Social Security Number:

Control Document Locator Number:

Date Form W-4 Filed or Received in IRS: [illegible]

Number of Withholding Allowances Claimed: [illegible]

Person to Contact:

Contact Telephone Number:

373-46-4805   29542-334-00211-0
DANIEL [illegible] EMANS
BOX 1073
WASILLA   AK 99687

IRS

We are reviewing your Form W-4, Employee's Withholding Allowance Certificate, which your employer forwarded to us in accordance with the Employment Tax Regulations. This is not an examination of your Federal income tax return.

In order to determine if the number of withholding allowances you claimed on your Form W-4 is correct, we need more information. Please complete the enclosed Form 6355 and return it to us within 15 days from the date of this letter. An addressed envelope is provided for your convenience.

If we do not receive your reply within 15 days from the date of this letter, we will advise your employer to disregard your Form W-4 and withhold tax as if you were single claiming one withholding allowance.

If you have any questions and want to call us, the person whose name and telephone number are shown in the heading of this letter will be able to help you. Since there will be a long-distance charge to you if you are beyond the immediate dialing area of the service center, you may prefer to write to us at the address on this letter. If you need help completing Form 6355, any Internal Revenue Service office should be able to help you.

Thank you for your cooperation.

Sincerely yours,

Roger Steele

Chief, Service Center Examination Branch

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

ANCHORAGE

HONORABLE JAMES A VON DER HEYDT, JUDGE PRESIDING

UNITED STATES OF AMERICA,
Plaintiff,
vs.
DANIEL R. EMANS,
Defendant.

A79-74 Criminal

REPORTER'S TRANSCRIPT OF ARLENE PATNOE'S TESTIMONY

January 28, 29, 1980

APPEARANCES:

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exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day."

Q That means the day that it occurred, you can change it, but not forecasting into the future what your losses may be?

A That is correct.

MR. SWARTZ: I have no further questions, your Honor.

THE COURT: Recross?

MR. MacPHERSON: Yes, your Honor.

RECROSS-EXAMINATION

BY MR. MacPHERSON:

Q Ma'am, the section that you just read, 3402(f)(2)(A) and (B), do you see anything in there that requires the taxpayer to substantiate what he has filled out on the W4?

A No, sir.

Q You talked about the dentist and the doctor, and the fire loss and this and that. Are you saying you have to wait until you have the actual bills in hand and it is paid, then it is determinable?

A Once you have committed yourself, say, you are going to have this dental work and it would cost you $1,000, and you still have the dental and you are paying $200 a month, and you start paying and you pay $200 in April and pay $200 in May,

AMERICAN TAXPAYER SOCIETY

STATEMENT OF MS. SCHAENEN

Senator **ABDNOR**. Our next witness is Jean Schaenen of the American Taxpayer Society. I understand——

Is this panel, I believe, coming forward?

Ms. **SCHAENEN**. Senators, this was intended to be a panel. I had been informed yesterday that our testimony would be required at 10:30 and the other witnesses who had planned to appear with me are not here yet but I can give you the substance of their testimony, and as soon as they arrive, they will present themselves.

Senator **ABDNOR**. How soon do you think they'll be here?

Ms. **SCHAENEN**. I had intended to meet them at 10 o'clock in the cafeteria, so they should be——

Senator **STEVENS**. Let's go off the record for a minute.

[Discussion off the record.]

STATEMENT OF DON PALLETT

Senator **STEVENS**. What's your name?

Mr. **PALLET**. I'm Don Pallett.

Senator **ABDNOR**. Do you have a written statement?

Mr. **PALLETT**. No, sir, I don't have written testimony because it changes as the day does.

Senator **ABDNOR**. All right. Mr. Pallett, you go right ahead.

Mr. **PALLETT**. OK. What happened here, I had my attention called to the IRS in 1972 but they give up pretty easy so I didn't really pay that much attention except that I started asking around and I started finding out the same types of testimony that you're hearing here. So I kind of let it slip for a while and then in 1974 I decided things was really going haywire but not just with the IRS; with our whole Federal Government and I was trying to figure out what was causing it. Now I'm an arbitration man on construction, usually hired as civil engineer superintendent. But I end up troubleshooting and I have to use quite a bit of research from the experts and then put it together to use it so that it can actually be put out in the field. So I started saving up my money, up on the North Slope in 1974-75. In 1976, being sure that we had real problems, I come off of my construction work and sat down in Vale, Oreg,. and I haven't been on my regular line of work now since, well, 1975 is the last year.

All right. Then I started calling research from all over the United States and just bringing it in and compiling it, studying it, and I heard all kinds of arguments. I took a lot of background in the Constitution. Then I went back and really studied it. Then I went back into history and just kept at it until I finally get the feel of what the Constitution was about. But I couldn't find what was causing this thing until January 1980 and I happen to pick up a set of tapes that laid it out pretty straight, just what was on. It was the old Law Nations-Law Merchant. So I sent off for this research and since 1980, January 1980, I have been compiling that stuff so that I could handle it.

Now when I felt that I was competent—well, to go back a little bit, in 1977, I knew enough about the 1040 form that I was just shaking my head over it. We're signing under penalty of perjury with 30,000 IRS codes and rulings that I can't understand, my accountant can't understand, other accountants can't understand, the attorneys are guessing at, and you can't get the answer from the IRS on it. Then as I got going along I was trying to find out who was the person or the individual required to file. And the consideration on the statute of Congress, nowhere where the common man can find it, you see this is an excise tax. It's been declared time and again, it's an excise tax. It's a voluntary tax.

EXCISE TAXES

Now all excise taxes tell what it is that they are based on and being voluntary, if you don't wish to pay gas tax, don't use the gas. If you don't want to pay tax on whisky, don't use the whisky. If you don't want to pay tax on imported goods, don't use imported goods. Now, what is it that we are doing as a privilege or whatever it is, where we are volunteering unknowingly to give up our constitutional rights? There's got to be something. So that's what I was after and it wasn't until I got the dope on the Law Nations. Lex Mercatoria, Law Merchant, customs of merchants trading. It goes on and on. It changes its name. It started out with the people that were instigating it over in Northern Germany, the old trading cities that set this thing up. They were first called the Hansiatic League, then the Hansa Hansa Bohn and they had their courts. It started out as the court of the state preponderance, Court of the Dusty Feet, Admiralty Court, Star Chamber, right on down the line.

All right. Now, we had them in here 1776 and they sold all gold and silver and left paper all over the country. It was called the continental dollar. They were under inflation, they couldn't pay their debts, they couldn't work, the country was in chaos, all right? I followed that on up through then, step by step. Then when this research with this knowledge of Law Merchant, then all of a sudden a lot of things come clear and I can read that Constitution then and understand what the Founding Fathers were talking about. They never named the merchants because what was known then as goldsmith and merchants, would now be international bankers and corporations. It's just that simple.

Well, this is based on a lot of digging and compiling and it's based on research of a lot of experts in this field. We have paralegals all over the country that dug this out just a piece at a time and I just compiled it to where I truly believe it. Now when I got up—I worked on that a little over a year.

Then what I done was I decided we'd see if we could get the issues in court on a transcript. So I had to con the IRS into taking me into court. I'd written letter after letter to them asking about their operation and about Law Merchant. There was 16 letters at least that went into them, asked them first, with Consititution rights. Then as it got on to Law Merchant, I started asking them about Law Merchant and of course none of that was ever answered.

PAYROLL WITHHOLDING

All right, when I got into court then I got indicted and ready for trial—or to get in there, why we had to solve the voluntary compliance aspect of payroll withholding in Idaho and of course, everybody got up in arms as soon as they found out how it worked. So then Ogden then demanded of Portland that I be taken in to trial. So I got in there and we had the trial May 12 and 13. They had me 2 years of willfully and knowingly failing to file.

All right. We went then the first day and finished them off the next——

Senator ABDNOR. What year was that?

Mr. PALLETT. This year, just last May.

All right, and I come out with the unanimous verdict of not guilty. Yes, I was willfull the jury all agreed, but not in a criminal context.

Senator STEVENS. What was this for?

Mr. PALLETT. I had filed since 1977 object, self-incrimination on those returns. And of course, the IRS doesn't recognize a fifth amendment return as having filed. So——

Senator STEVENS. Where was the trial?

Mr. PALLETT. Portland Federal court district, Judge Burns, CR-8131-1. I'm the first one I guess, from what I understand that's escaped down there on willful failure.

Senator STEVENS. Have you filed now?

Mr. PALLETT. No, I'm going to go ahead with it now. I'll tell you the rest of it.

Senator ABDNOR. I don't want to rush you but we do have to move right along if we can.

Mr. PALLETT. Sure. That's why I'm trying to hit her fast because I'll come through her here.

Now one thing we promised the jury when we were down there was that we were in the trial to educate our Government, not to fight with them and ever since then I've been out here trying to educate and let people know what this is all about. The first thing I done is sent a 10-page letter you have there, I gave it to the truckers and they put it all over the United States. So it's known from coast to coast by now. And then I got up here and caught Mr. Dunham with a guilt verdict waiting for sentencing, so that was ideal to go ahead and start educating up here. That's all those paid advertisements that you see. And if you'll study that material, you'll get a picture of what we're talking about and then when protection is afforded to the paralegals, and you need the actual technical end of it, then they will come forward with their research and you can have the rest of it.

Thank you.

Senator ABDNOR. Thank you.

I believe this time, Ms. Schaenen, is your group here now?

Just the two on the panel, is that right?

Ms. SCHAENEN. There's another gentleman back here that I will call later.

Senator ABDNOR. Can we all come up at one time so we go right along?

Just be seated then. We'll start out with Ms. Schaenen and introduce your panel and how you intend to proceed.

[Reference material of Donald E. Pallett follows:]

SUBMITTED MATERIAL OF DONALD E. PALLETT

BEHOLD!

Pallett has spent 7 years and many thousands of dollars compiling this information in a form that we working people can understand and use. But,as nothing in this world is free, he is charging you Patriotic Fellow Americans the time it takes you to run off ten copies of this letter and send them to other Patriotic Fellow Americans. Promise him you will honor your obligation to perform. Don't be like our dedicated I.R. S. officials. After all you don't want, attached to your name, the stigma of being one who does not tender payment of his debts and cares not what happens to his country.

To:
My Patriotic Fellow Americans
Every Town, U.S.A.

INTRODUCTION

I know many of you are curious as to the how and why of my entrance into this tax battle. Therefore I am taking the time to tell you the story should YOU care to take the time to read it. The following narrative is based on my research findings, coupled with common sense, and if there is anything there you might disbelieve I suggest you check it out for yourself, as I did!

First of all a little backgrounder on myself. I am a graduate civil engineer, registered, with 25 years experience in construction engineering, supervision and arbitration. I have, at various times, been a card carrying member of the operating engineers, teamsters, carpenters and ironworkers unions. All of this has taught me to use my god given common sense.

My first battle with government beauracracy was in 1955. I had taken 4 years of army R.O.T.C. in college, but 3 days before graduation I was informed I would not be commissioned because of a spot on my lung. A year later I was classified I-A on a draft physical. In 60 days I not only had my commission, but I also became the only member of my graduating class to serve only 6 months active duty (to shut me up).

While on active duty, the army lied to me. So I went hunting the last 43 days and no one bothered me because I was mad. (besides I had the goods on them)

Upon discharge from active duty I began serving my seven years active reserve obligation. There I found my brother officers being harrassed so they would quit before they had their full retirement time. As soon as I discovered this situation I quit attending and started battling. Seven years and two active duty stints, for disiplinary action, later the army retired my commission, sent my records to St. Louis, Missouri and burned the record center down (I suppose this was so there would be no more rememberance of me among men or beasts.)

By this time I had mastered the fine arts of letter writing and story telling (dazzling with brilliance or......). So I was soon merrily battling my way through the Oregon Highway Department, Bureau of Public Roads, etc.

In 1971 the civilian Corps of Engineers started a harassment against my employer. To solve this defugalty I initiated the fine art of finesse. Four hours later three car loads of inspectors left the job and we were able to complete the project under the friendliest of terms.

In 1972 the I.R.S. sent me a letter stating I had claimed $100.58 too much refund. So I posted them a return missile and here came my money, correct to the last penny.

It wasn't until 1974 that the wind changed to a direction where the stench from our government came to my attention. How I had remained upwind for so long I still cannot explain. But there it was, right out of the blue ether. So I started out to unravel this new con. I asked a knowledgable acquaintance what was wrong and that afternoon ended up in a John Birch American Opinion Bookstore.

HUNTING THE CON

I spent the summer of '74 on the North Slope of Alaska working and studying backgrounder. Everything pointed to the bankers and all I had to do now was find out how their con was being procecuted. I knew if I was ever going to get to the Emerald City I had best start at the beginning of the yellow brick road. So I started by studying the Constitution, Declaration of Independence and the Federalist Papers. Here is what I learned about taxation.

It was the intent of the founding fathers that a man, by his labor, should first put bread in the mouths of his family (no taxation). As he became more affluent and could afford a few of the luxuries of life such as import goods, whiskey, etc. he should start helping to support his government (indirect tax on commerce). And when he had arrived at that level of wealth where he owned real property he could give still more support to his government (direct tax on property due to ownership).

But our founding fathers were realists. They knew and history showed that those who had wealth also wielded great power and little, if any, revenue had ever been derived by direct taxation. This is very aptly put forth in Federalist Papers No. 12 Hamilton. Therefore they provided for the Federal Government to obtain its revenue by the imperceptible agency of taxes on consumption. To this end they gave the federal congress sole authority to tax the foreign commerce of the nation to any extent required to obtain revenue. This is explained very well in Federalist Papers No. 32 Hamilton and No. 45 Madison. If one is familiar with the massiveness of our foreign commerce, which is the backbone of any nation, common sense would tell him that congress could never require the use of all the revenue that could be obtained from this source. So why did we have this so-called income tax? When I observed that the second plank of the Communist Manifesto states "a heavy progressive or graduated income tax" is required to take over a country into communism, I smelled a rat. And ahunting I did go!

During one of the numerous bull sessions I seemed to always be entering into someone mentioned the case of Brushaber vs. U.P.R.R. Co. (1916) 240 US 1. I headed for the Malheur County law library. By the time I was through I had also dug out Pollock vs. Farmers 157 US 429, Flint vs. Stone Tracy (1910) 220 US 107 and Keasley vs. Rathensies (1943) 133 F 2d 894. Soon after, in the book, "THE BIG BLUFF", I found the case of U.S.A. and LYMAN M. NICOLL, I.R.S. vs. VAUGHN ELLSWORTH Civil 70-587 PHX. From all this information my common sense put together the following:

> Pollock vs. Farmers was a test case on the 1894 act (28 Stat. at L. 509) which laid a tax on incomes from all classes of property and other sources of revenue which was not apportioned, and which therefore was of course assumed to come within the classification of excises, duties, and imposts which were subject to the rule of uniformity, but not the rule of apportionment. The constitutional validity of this law was challenged on the ground that it did not fall within the class of excises, duties and imposts, but was direct in the constitutional sense, and was therefore void for want of apportionment.
>
> The whole law was, however, declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor (Id p. 637), a result which, it was held, could not have been contemplated by Congress.

The above decision coincided with the intent of the founding fathers that citizens labor should not be taxed.

Now let us take a look at Flint vs. Stone Tracy (1910).

The case states:

> Internal revenue--Federal corporation tax-excise or direct tax.

> 2. An excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity is what was imposed by the act of August 5, 1909 providing that insurance companies and all corporations, joint stock companies or associations organized for profit and having a capital stock represented by shares, shall be subject annually to a special excise tax.........

Now my thought on this case was if all of a persons income was derived from a corporate source it would be defined as follows:

> INCOME--sums received on interest on stocks and bonds. A living which is derived from a certain sum of property you do not have to touch. It produces the return of itself.

Now for Brushaber vs. U.P.R.R. (1916) which states:

> The statute enacted October 3, 1913 provided for a general yearly income tax to be collected at its source; that is, makes it the duty of corporations, etc., to retain and pay the sum of the tax on interest due on bonds and mortgages, unless the owner to whom the interest is payable gives a notice that he claims exemption.
>
> Brushaber also states that the whole purpose of the (16th) Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived.

This is what I see today! The income tax when imposed is relieved from a consideration of the source whence the income was derived.

The definition of income today is:

> INCOME--that gain or recurrent benefit (usually measured in money) which proceeds from labor, business or property: revenue: receipts

This is in direct conflict with the decision of Pollock vs. Farmers and a slap in the faces of our founding fathers.

Keasley vs. Rathensies (1943) further ratifies Brushaber in that it states the tax is on capital labor (not on an individual's labor).

In the case of U.S.A. and Nicoll vs. Ellsworth, Mr. Ellsworth objected to showing his corporate records. The court had this to say: "The courts have always held that personal books and records are privileged; that corporate books and records are not."

Using the foregoing information I started putting the following questions together with engineering analysis and plain old common sense as follows:

1. Why does a wage earner qualify for payment of taxes on a corporate privilege if he doesn't own shares, stocks and bonds?
2. Why does he have to pay a corporate tax?
3. And why does he have to waive his guarantees under the Law (Constitution) so the taxes can be collected?
4. What action of a typical wage earner makes him a corporation or quasi corporation?
5. Why does the I.R.S. head for the bank records first thing?
6. Why does the bank have to hand over these records?

The answers to the above questions could only be as follows:

1. Somehow a wage earner has volunteered himself into a corporate or quasi corporate capacity.
2. All corporations or quasi corporations have to pay the tax unless they have exemptions or lack of income.
3. All corporate records are public property.
4. The wage earner's personal check is a bond making him a quasi corporation.

5. The I.R.S. heads for the bank to see if you have availed yourself of a corporate privilege and are therefore a person or individual required to file.

6. Here again the bank has to hand over corporate records as they are public property.

By this time the stench of this con job was enough to turn my stomach. But I still didn't know how the bankers got it through the courts. I knew it had to somehow be under color of law. But what law? I had enough information to know we were in trouble so I decided to bail out and started filing 5th Amendment returns in 1977. Then I really went to researching. I wasn't about to relinquish any of my rights to law.

LAW MERCHANT

It is strange how I kept missing those people that had the key to the con. I didn't get even a whisper until January 1980. I was attending a meeting of the Idaho Patriots in Boise when I by chance purchased a set of tapes taken at a lecture by Lee Brobst, 1116 Chestnut Avenue, Altoona, Pennsylvania 16601, (814)946-0372. When I got home I slapped the first tape on the player and in ten minutes I knew I had the con. The corporate wolf! The "custom of merchants", also known as "Law Merchant", "Federal Mercantile Equity" and "The Law of Bills, Notes and Cheques". I immediately sent off for the research material to Bill Avery, P.O. Box 1272, Andrews, North Carolina 28901. Then I got busy studying all about this bunch of outlaws who were known way back as Goldsmiths and Merchants but have now changed their names to International Bankers and Multinational Corporations. Sound familiar?

The best backgrounder material I have seen on these animals comes from a patriotic group in Denver, Colorado who can be thanked by dropping a note addressed Box C, Denver, Colorado 80226. They have a airline pilot researcher who must be half bloodhound. The material I refer to is "A Students Course on Legal History of Law Merchant" by Helen West Bradlee of the Suffolk Bar, Boston, October 1929 and "The Law of Bills, Notes, and Cheques" by Melville M. Bigelow, PH.D., Harvard, Boston, Little, Brown and Company, 1900.

Thanks to the two weeks I spent with Bill Avery this spring in Andrews, North Carolina I can explain to you very simply how the con works. Now pay attention!

> When you go into a bank, take out a personal checking account and sign the white card the trap is set. You have just volunteered yourself, unknowingly, into a mercantile equity jurisdiction as a quasi corporation (your check is your bond). You are in partnership with the bank for a profit. The privately owned Federal Reserve Corporation extends to you the same privileges it enjoys, that of creating money (writing checks) and using negotiable paper under limited liability (credit cards). The international bankers make you a "Citizen of the World", on international credit and place you under the jurisdiction of the "Law of Nations" which is the "custom of merchants". Of course, it goes without saying, you have unknowingly volunteered to give up your Citizenship of the United States and all your guarantees under the "Constitution" and the "Bill of Rights". But congratulations anyway fellow "merchant at equity". You have just hit the paper trail of bills, notes and cheques.

Now do you understand why you have no constitutional rights in the courts which try you under a mercantile jurisdiction? You have voluntarily forefited your rights to law (The Constitution). After all nobody forced you to enter that bank. You entered it of your own free will.

Lets talk about the courts. They are of two types basically. A court of Law and a court of Equity. A court of law is manditory. When a plaintiff files charges the defendent must come forth and defend himself at law before a jury. A court of equity is voluntary. A petitioner voluntarily petitions the court and the other party voluntarily responds. The chancellor (no longer a judge) searches his conscience for an equitable decision to solve the problem. There is no jury at pure equity.

The problem with our courts now is that they are under pressure to farm taxes, not administer law and justice. It is almost impossible to tell even what jurisdiction they are trying you under. It could be any one of the following (or maybe more):

1. Common Law
2. Common Law Equity
3. Statute Equity
4. Mercantile Equity (tax court)

Now lets discuss the tax court which has been known throughout history by the titles; court of the staple, court of the dusty feet, court of pie powder or pepoudrous, star chamber and admiralty court to name a few. The I.R.S. sends you a 90 day letter with an astronomical assessment demanded. You go to the tax court voluntarily as a petitioner. Just by the act of entering the court you admit you are guilty of being a merchant at equity. Unknowingly you are stating to the court: Here I come a merchant. I have clean hands, my word is as good as gold. I recognize this as a mercantile case. I agree that in mercantile cases the "custom of merchants" supercedes the Constitution of the United States and I voluntarily waive all my Guarantees under the Bill of Rights. I pray for equity. The I.R.S. (merchants representatives) respond as respondents and instruct the Chancellor as to what is the latest in "customs of merchants" (I.R.S. codes and rulings). The Chancellor then requests you to submit your records and oral testimony so it can be determined how much you owe. He then follows his conscience. There is no jury. After all you admitted your guilt by entering the court. All that is left to determine is the amount to be assessed.

Some people walk up to the bench and say "I demand my Constitutional rights"! The Chancellor then says, "You entered this court, recognized this jurisdiction and now you demand the Constitution? It doesn't apply here!" He is absolutely right! You are being tried under "custom of merchants" (Law of Nations) as a citizen of the world. Fun, huh?

Well, don't feel badly about it. After all, there is no statute of limitations to the Constitution. You can always go back to the world of law and leave the hog mire of equity. I would be a poor engineer if I went to all this trouble to find the problem and failed to find the solution.

LETS GO BACK TO LAW

The transition from equity to Law (The Constitution) is relatively painless thanks to the efforts of Patriotic Americans such as Bill Avery, Lee Brobst, our friends at P.O. Box C, Denver Colorado 80226, the Hon. William Dee Morris (my lawyer), etc. They all contributed to the solution and should have your ferverent thanks.

Now don't worry about my having gone on trial. You won't have to. I could have faded out of equity and went to law without a ripple. But then you wouldn't have paid any attention to what I say. So I had to get a diploma (transcript) so I would have prestige and could say, "See, I have been there and I know that of which I speak". Okay?

You have heard time and again that the income tax system is based on self assessment and voluntary compliance. And so it is. You went voluntarily into equity for the privilege of a convenience, in the name of utility. Now no one can be required to avail himself of a privilege or to continue to do so should he wish to stop.

The first thing you do is get rid of that convenience called a checking account. You cannot enjoy a corporate privilege and be at law. Drop all bank credit cards. Divest yourself of all stocks, shares or bonds in businesses availing themselves of a corporate or juristic privilege. You have until January 1st to get ready for the new year. You have to begin then as a merchant trader at law. This means you have disenfranchised yourself from equity and have now gone to law (The Constitution). Once again a citizen of the United States, with all the rights thereof.

Resubmit your W-4 form to your employer. Print your name at the top for identification. Then write across the face of the form "I demand my 5th Amendment rights under the Constitution of the United States". DO NOT SIGN THE FORM. Accompany this form with a letter to your employer stating:

> As of January 1, 198__ I am to all intents and purposes a merchant trader at law on a cash basis. I do not enjoy any limited liability for debts. Please do not withhold any income taxes from my wages.

When you receive your pay check endorse it on the back and under the endorsement state:

> "Cashed at Law without recourse."

You can enjoy a savings account if you wish to still use the bank as it has no mercantile limited liability attached to it. I prefer to leave them completely alone. There are private investment opportunities you can avail yourself of.

When you have to pay monthly bills purchase a Postal Money Order. It is standard money, instant pay. There is no mercantile stigma attached to it. A Postal Money

Order says Pay To. Negotiable paper (personal checks, certified checks, etc.) say Pay To The Order Of. This is the signal for the trap.

If a checking account is a necessity to conduct your business it is no longer considered a convenience when used for this purpose only. So you can take out a new checking account, only don't put anything on the white card. That again is the trap. The minute you sign that card you have voluntarily walked outside the Constitution and acquired the privilege of bank credit. Instead staple to it a affidavit which states the following:

> "The holder of this checking account is by all intents and purposes a merchant and trader at law on a cash basis. He denies any jurisdiction of mercantile equity brought on by H.J.R. 192, on June 5, 1933. The holder of this checking account also demands all his rights at law, including the 7th Amendment to the United States Constitution. This checking account is used only as a necessity and not as a convenience. The holder also does not enjoy any limited liability for the payment of debts.

That last statement is the secret to the income tax.

When you write a check for your business you write under your signature:

> "Written at Law without recourse".

When you receive a check for your business you write under your endorsement:

> "Cashed (or Deposited) at Law without recourse".

Now if in any of your transactions, you are drawing up legal papers for county court, federal court, etc. one of the very first statements you will make on this paper is that you are a merchant trader at law on a cash basis. That is the secret to having the judge treat you like a human being. But don't ever make that statement if you don't have that right because right then and there you have committed perjury and if they find out about it you will never be able to testify in court again or sign your name to a legal document.

Should you go over the first of the year deadline owing on say a Master Charge or VISA card that is alright. The important point is that from January 1, you will not use it. The minute you use the card you have acquired the privilege and all the judge or the I.R.S. needs is a copy of that check, which is the prima facie evidence that will convict you, because, at the federal level, they get you in dealings as a merchant in interstate commerce. That's why income tax is levied under the commerce court.

For the above mechanics on becoming a merchant at law you have Lee Brobst and Bill Avery to thank. If you get the chance, please do so.

WHAT CAN YOU DO?

Every individual patriotic citizen has power, under the law (Constitution) to do plenty. This is pure theft of our rights and our substance (property). Let us first discuss the implications of what is really being perpetrated. Then discuss the solution to stop it.

Our first subject will be personal checks. How do they constitute a bond? From the day you date the check there is one to three days before a demand can be made against your deposit. The international bankers, during this period, supposedly loan you the money to guarantee payment of the check. And for this service they get a return on their investment. The tax tables would therefore be the rate the bankers charge for the loan of their money. Who gets the money then? Why the bankers of course, with a small amount going to the Federal Government for the corporation tax. After all it is the bankers who made the loan. Where does the Internal Revenue Service fit in? Why they are a service furnished the bankers, by our Government, to collect the bankers money for them, of course. Almost as good as plain stealing, isn't it?

Now what can you do? Well, you were never informed by the bank, when you took out your checking account that you would be volunteering yourself into a mercantile equity jurisdiction, on national credit, as a citizen of the world and thereby giving up your rights to law and your United States citizenship. Therefore the whole thing was perpetrated under deceit, fraud and entrapment. Every state has a Consumers Protection Act. I think every one of us has a darn good case for a lawsuit against his bank, especially if he has spent time in prison.

Here is another good one. How many of you people have a mortgage contract against your home or farm? Under law a contract has to have four essential elements to be valid:

1. Offeree
2. Offeror
3. Consideration
4. Time of Contract

Lets look at 3. Consideration:

> At Law--that which is regarded as the equivalent or return given.....

If you have given the bank the title to your property you have given them substance. But what they have given you is credit, manufactured out of thin air through fractional reserve banking and thereby is only evidence of debt. As debt has no substance (gold or silver) it cannot be the equivalent of your land title. Could it be the bank has defaulted on one of the essential elements of the contract, thereby voiding it?

Lets look at 4. Time of Contract:

When are federal reserve notes redeemable in gold or silver?

Could it be that if you people contacted P.O. Box C, Denver, Colorado 80226 they could put you in touch with a para legal that could instruct you on how to file a very interesting lawsuit against your bank for breach of contract? I don't have that expertise.

Now last but not least! Lets go to Article I Section 10 of the Constitution. "No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts". This clause is absolute against the States. You have Judge Roger Sherman to thank for this one.

It was not the tea tax that caused the Revolutionary War. The bankers had flooded the colonies with negotiable paper and stolen all the gold and silver. No one could pay his debts, only tender them on with negotiable paper. Sound familiar? By 1788 there was rioting all over the land. Pornography was being sold in the streets. George Washington couldn't pay his monthly bills. No one could contract as the continental dollar was losing value so fast that they could not keep up with it. The Constitutional convention commissioned Judge Roger Sherman to figure out a way to put this country on a gold standard so the bankers could never do this to us again. It took him 3 weeks of deliberation. As the Federal Government had to be allowed to emit bills of credit in time of war he could do nothing there. So he made the gold clause absolute with the states.

> "The money of account of the United States shall be expressed in dollars or units........and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation.
> 31 U.S.C.A. Section 371

This means if you wish to tender negotiable paper (F.R.N.'s) and a public office wishes to accept it you can and vice versa. But if you feel that this paper is being abused you can demand the transaction be in gold or silver, the money of account of the United States. But 31 U.S.C.A. Section 408 and 31 U.S.C.A. Section 405 (a)-3 prohibit the redemption of any United States currency dollar for dollar into gold and silver. Thus no one can pay funds into a public office in conformity to federal regulation until an official determination is made revealing WHAT Congress has declared as the replacement for gold and silver as the money of account of the United States. To obey the law you can only tender a Public Office Money Certificate until an official determination is made of the substance of said money, said certificate to be void if not presented to payor for redemption in 120 days. Get the picture?

F. Tupper Saussy has a best seller entitled "Miracle On Main Street" which explains the whole thing. You can get this miracle and a book of 64 Public Office Money Certificates by writing to:

Spencer Judd, Publishers
Post Office Box 143
Sewanee, Tennessee 37375

Miracle on Main Street	$6.00
Book of 64 Certificates	$6.00

While you are at it get several books so you can send them in with your Certificates. After all we want to educate the other side.

AS FINAL PROOF of the above pudding I refer you to the United Nations, the ground for which was donated by our king merchant himself. This is the proposed headquarters for one world involuntary mercantile servitude, which violates our 13th Amendment (prohibiting involuntary servitude). There is no communism, fascism or socialism. These are decoys to keep your eyes off mercantilism under the Law of Nations. Power and Money! The buck! Are you beginning to get the picture?

Well, that about ends it. I have said enough to give you some ideas on what to do. So get to doing! Time is getting short! You are the people who will straighten this mess out. I only hope I have managed to help you along the way.

I will be sending the below listed material to:

THE GOLDEN MEAN SOCIETY
Peggy Christensen
P.O. Box 7733
Missoula, Montana 59807
(406)728-9340

Contact Peggy for whatever you want. She is set up to disseminate it.

1. Trial Transcript
2. This Letter
3. Legal History on Law Merchant by Helen West Bradlee
4. The Law of Bills, Notes and Cheques by Bigelow

And I will be headed for Alaska to go to work. I hope!

THE FOREGOING IS NOT THE WORK OF ART.
IT'S THE PRODUCT OF PALLETT.
(Art had nothing whatever to do with it)

Respectfully,

Donald E. Pallett

Donald E. Pallett
Rt 2 Box 13B
Vale, Oregon 97918
(503)473-3831

The above signature for identification only. Signed at Law (outside the jurisdiction of the City of London) WITHOUT RECOURSE to the "custom of merchants".

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AMERICAN TAX EDUCATION SOCIETY

STATEMENT OF JEAN SCHAENEN—RESUMED

Ms. SCHAENEN. Good morning, Senators. My name is Jean Schaenen. I'm a lawyer, I represent American Tax Education Society which is an organization which exists in the State of Alaska as well as about 10 other States. About one-half the members are in the State of Alaska. Another large group live in the State of California and the others are scattered out from here to there.

On my right is Mr. Glenn Huff, who's the vice president of American Tax Education Society and to his right is Dr. Rich Pauli who is a member of the society.

DESCRIPTION OF SOCIETY

Let me tell you briefly what the society is. It's an unincorporated association of members. It was formed officially in the beginning of 1978 and the purpose of the society frankly, is to organize for resistance to taxation to what is perceived by the members of the group to be excessive techniques in the enforcement of the tax laws. The members are dedicated to carrying out their purpose in an entirely legal manner and it is one of the major purposes of their organization to make sure that the Internal Revenue conducts themselves in dealing with them also in an entirely legal manner. Therefore, although one main thrust of the organization is to find ways to reduce taxes, another main thrust is to find ways to organize and use the power of the group in order to coerce Internal Revenue into following their own rules and following the statutes, the law of the land and the Constitution in dealing with them as to their tax matters.

TAX SHELTER PROJECT

Now the Internal Revenue has a project on the national level. It's a tax shelter project. This was formulated by the former Commissioner apparently, a number of years ago and the general method of proceeding with project tax shelter, as I will refer to it, is—well, the purpose is to deal with situations in which a promoter sells a tax shelter investment as a limited partnership or however, to various purchasers who then generate usually, deductions from their investment and these deductions are used to shelter income. The approach has been to identify promoters, in many instances to pursue the promoters in a criminal investigation. Through that investigation, to obtain a list of the investors in the tax shelter and then to undertake to audit all of the investors in that particular tax shelter and find out all the pertinent facts pertaining to it, pursue perhaps, criminal remedies against the promoters and civil remedies against the purchasers. Since this is organized on a national level and carried out as an organized project, I believe in every district, certainly in the districts that I know about, it's clear that this is a very intensive effort to reduce the use of tax shelters and keep them very firmly under control.

Now the tax shelter project and the tax shelter plan has been applied to this group and I believe that although there is certainly case law that says that IRS is allowed to, for example, audit all the doctors in town in any one year, or to focus heavily on limited partnerships with particular characteristics, I believe that this group is clothed with first amendment rights which should and under the law, do prevent Internal Revenue from carrying on the type of attack that they have conceived against tax shelters against these individuals. For one thing, there is no tax shelter involved here. The members of this group did not invest in any asset whatsoever and they paid money to belong to a group. They got no asset in return for that investment. The group provides them with two main things: One is ideas about tax law. The communal knowledge that has been obtained by the members of the group with respect to the tax law and ideas about how to conduct their own business affairs, and it also provides them with a common defense which they can utilize and have utilized in coming up against the Internal Revenue.

IRS ACTIONS TOWARD SOCIETY

Now we would not try to fool you into thinking that these people's tax affairs have been entirely innocuous. They have certainly, the members of the group to a large extent, have certainly taken an aggressive stance with respect to their own individual tax matters. They certainly never expected this particular stance that they had taken would go unchallenged by IRS. They have from the beginning kept good records of what they have done within the text that they would eventually—they might eventually undergo an audit and have to defend their position in Tax Court. So it is not the fact that some members have been audited that we are complaining about. What we are complaining about here and have been in the past, is that IRS has focused in on this group, has deliberately sought out members of the group without respect to what they have done with their individual tax matters. They have merely because of their association with the group, selected them for intense audits for every year that is available, for examination of every aspect of their business affairs and their personal affairs. These people have been asked to produce every financial—every record of every financial transaction that they have engaged in. They have been summoned for their bank records or for every bank account they've had anything to do with whether it be a business account, a personal account, their aged mother's account, their children's account, it matters not. IRS has demanded total disclosure of all these affairs. The—besides the use of a summons, by now there are about 65 or 70 petitions in Tax Court with respect to asserted deficiencies against the members of this group. Let's see the total figure at this time, total asserted deficiencies against members of this group in Alaska only, is $10,819,928.85.

Now this attack on this group has been going on for quite a long time. It began with the criminal investigation of Mr. Huff and Mr. Bumpus, another vice president of the club, who are certainly, I think it's fair to say, the leaders of the club. They devoted a substantial portion of their time over the last few years to researching taxation, conferrring with individual members about their business affairs as they—as the club concepts have been applied to them, traveling extensively for the benefit of members and conferring with them where they are, holding meetings and generally the club has become the focus of their life. They have been under criminal investigations since 1978. There is—they are not under indictment. They have borne up well, I believe, under the circumstances, but we're not going to go into details of that investigation.

I want to emphasize again that no two people in this group have conducted themselves in the same way. There is no unity in their tax affairs. They are engaged in widely varying pursuants. There are doctors and lawyers, there are well drillers and builders; people in land development, people in manufacturing; a wide variety of backgrounds here. What these people do tend to have in common is the fact that they are—that most of them are self-made individuals who have worked very hard, who have been quite successful and over the period of years, through repeated audits or through excessive taxation as they perceive it, have become angry with the way the revenue is handled in this country.

RESULTS OF AUDITS OF SOCIETY MEMBERS

Senator **Abdnor**. Of all the numerous audits that the members of your group have undergone, after the audit are most of them found not owing additional taxes, or do they usually find some legitimate charges?

Ms. **Schaenen**. All of these cases have been denoted as litigating vehicles. The revenue agents who have been conducting the audits have no authority to decide any issue involving the concepts that the club espouses in favor of the taxpayers. Therefore, wherever there has been such a transaction, they have been consistently disallowed. One of the exhibits that I have provided for you is an Internal Revenue manual having to do with the tax shelter program that describes litigating vehicles, and how they are to be handled. The only way for these individuals to resolve anything without going to Tax Court is to give up and pay the tax. In order to defend their—the issues involved in what they are doing, they have had to suffer the issuance of 90-day letters and then file petitions in Tax Court. The 90-day letters themselves are constructed in such a way that there are no options.

For example, Dr. Pauli here will tell you that in years—a period of years in which his gross receipts were approximately $500,000, he was issued 90-day letters assessing or asserting deficiencies in the amount of $1½ million. The 90-day letters state deficiencies based upon three or four different theories of taxation, all in the same 90-day letter perhaps, or the second 90-day letter. The money earned by one entity is taxed here under this theory and then taxed again under another theory, either in the same 90-day letter or somewhere else. He will tell you more about that in general.

So all of the issues involved have yet to be decided. We've just taken our first case into Tax Court and I'm sure you know how Tax Court works, it will be quite a while until we get some answer. So nothing has been decided.

Senator **Abdnor**. That's the first one you say?

Ms. **Schaenen**. That's the first one. It went to trial in early July 1981.

Now as I told you, every single record that these people have produced has been demanded in an audit. When I realized the mass situation that these people were up against, I asked for a meeting with the revenue agent and said: How can we handle this? I'm trying to protect my clients' interest and protect the interest of the Government as well. It seems to me that since none of the issues involving the questions that they have raised by their unified approach, since none of these are going to be resolved at this level, and since providing information to you at this time is going to give you information that's going to cause you to open up still more audits against these people, I believe that there's nothing to be gained for my clients to show you this information at this time. We will certainly produce it in Tax Court. The information exists. Is there something that you can resolve? We will be happy to document any such issues. Will you please give us specific lists.

There were three revenue agents assigned to conducting audits on these individuals. That's their full-time job. They agreed in that meeting that they would do that.

They did send out specific requests to the individuals. I responded in the case of each and every one of them and either told them we were ready to comply or told them some particular reason why we were not ready. Someone was out of town or someone's records were stored in a different place or whatever. We immediately began to schedule audits and the one particular day I had four of them going simultaneously in my office. There were two revenue agents sitting there. There was a long table, I was handing records to one, retrieving records from another, and we managed to get through the examination of four individuals on that one day. Wherever there were no trust issues involved, in every single instance—the business trust issues involved—that in every single instance, the examination showed that the taxpayers—what the taxpayers had represented on their returns were very substantially correct. There was no instance in which this was not so.

After proceeding with this, and I thought very productively over a period of a month or so, the revenue agents informed me that the deal was off. They were not going to continue under the agreed terms, that they were, if we would not agree to volunteer the information, going to summon all of these individuals' bank records anyway, and I conferred with my clients after this and they agreed that if IRS was going to summon all their records anyway, there was very little point in their voluntary compliance, so we just allowed the situation to go forward.

IRS SUMMONSES OF MEMBERS

The IRS then drew up summonses asking for—and one of these summonses has been provided in the packet of information that I gave to you—asking for each bank for—to list every account under the signatory control of the individual involved, signatory control in any capacity whatsoever, to give the name of the account, the type of the account, the date that it was opened, and the date that it was closed, if it had been closed. The agents then served these summonses on the banks, did not give notice to the individuals involved, told the banks that there was no need to give notice to the individuals involved and tried very hard to get these summonses complied with secretly without my clients ever knowing that they were going on. A couple of the banks responded to an Alaska statute which required disclosure of any bank summons and did notify the individuals.

At this time I notified my clients what the IRS was doing and told them if they wanted to help with this situation, they would have to go to every bank that they had ever had anything to do with and give them a general notice not to comply with any such summons that they received. We later learned that a number of the banks complied anyway but four of the banks did not. The Government went for enforcement on those summonses, again this was without notice to the parties involved and it's merely by the courtesy of one of the banks that we found out that the enforcement proceedings were going on. We did find out. I filed motions to intervene on behalf of all of the individuals involved and motions to quash the summonses. Judge Fitzgerald in district court here in Anchorage considered the pleadings as filed by both parties and issued his order quashing all of these summonses. The—he said that clearly with the type of information that was called for in the summons, that notice was required and the use of them was illegal. The Government appealed that order but later dropped the appeal. They have now been dismissed.

Shortly after issuing all of these summonses without notice, IRS issued another set of summonses calling for the same information but all of the account information as well, plus—well, it was a two-page list of demands and a sample of one of those summonses is included in the packet of material that I gave you also. The summonses called for not only canceled checks and deposit slips and statements, but also all information pertaining to loans and cashier's checks, any sort of business that these people might have had at any of these banks. There were, oh, between 150 and 200 of these summonses. Again, the individuals inolved have sent letters to the banks asking the banks to stay compliance. The banks in this case did stay compliance and eventually those summonses came up for enforcement. We intervened in those actions and claimed—raised issues of harassment of all the individuals involved. The situation had proceeded by then, I should tell you, to the point where all of the individuals affected by the summonses had already been given 90-day letters for all of the years covered by the summonses. Therefore, I was aware that they would—as I said before, they were going to be producing all this information for Tax Court anyway. It was going to be mandatory with the volume of cases involved, that we get busy very quickly in putting all of the facts before the Government in order to be able to present our cases effectively in Tax Court. There was certainly never any idea behind all this to hide the transactions themselves. Therefore, in the midst of these proceedings to enforce these summonses, after an evidentiary hearing, I offered to resolve all these cases by having my clients volunteer their canceled checks and bank statements. The Government agreed to this and we quickly went into the compliance phase on all these summonses. The revenue agents came out to my office almost daily over a period of several months and my clients brought in box loads of their bank records. The revenue agents copied each and every one, front and back of every check, every bank statement and they have now assembled a permanent library of the financial transactions of these individuals, for what purpose and how long this will all be retained I don't know.

SOCIETY COMPLAINT ALLEGING VIOLATION OF FIRST AMENDMENT

In the meantime, oh, 1 year ago, last February, realizing what sort of situation we were up against, the club filed a complaint in the District Court of the United States for the Western District of Washington, alleging violation of first amendment, fifth amendment, several other amendment rights of the members of this group. The Government did not answer the complaint. Instead, they filed a motion to dismiss and usually I suppose it's—there's very little question involved, and such lawsuits are dismissed in short order. Judge McGovern, the chief judge of the district court down there, considered the matter for nearly 1 year and in April finally issued his order. He granted the motion to dismiss with respect to our claims for injunctive relief based upon the Anti-Injunction Act, which is part of the Tax Code, and says that one may never enjoin efforts to assess or collect taxes, but denied the motion to dismiss with regard to claims for damages. That order is included in the packet of materials I gave you. It says that based upon the affidavits, the exhibits that were supplied to the court, it appears that there may have been very substantial violations, constitutional violations of the rights of the individuals involved in this group and the group itself, and after receiving that order we went into discovery and I have—although obviously with the suit in this particular State I can't go extensively into the evidence that has been obtained—there is certainly ample evidence on the record now that the IRS has indeed very deliberately selected out the members of this club for the type of treatment they have received. There's no question about that. I also have other evidence which I can't go into at length, that would tend to substantiate virtually every complaint that is made in the complaint. I have not given you a copy of the complaint but in Judge McGovern's order, he has told you the substance of the complaint very early on in his statement of facts.

Now the Government, in pursuing criminal investigation against Mr. Bumpus, has some of the records of the bank of the club. The summons was eventually enforced and when it was time to comply and produce the records, we had argued of course throughout these proceedings that the club records had been summoned, not for any bearing that they might have on the tax liability of Mr. Bumpus which is what the Government had asserted, but because the Government wanted to obtain the membership list and find out who the members of this group were. The Government of course, stoutly denied that. Well, when Mr. Bumpus finally had to turn over the club records, the Government had them in their hands, they sent them immediately to the examination division. I have just received a transcript of the testimony given by the revenue agents and by Mr. Forshinger, the head of the criminal investigation division here, that comes from the hearing on the summons enforcement in which I would like to read to you just very briefly——

Senator Murkowski. I have a question if I may, Mr. Chairman?

You indicated that the names of the membership had come from bank records that were subpoened. How did the names appear on your bank records?

Ms. SCHAENEN. Well, Mr. Bumpus in particular, had expected to be audited eventually himself, and therefore he kept very meticulous records. And when he made deposits into the bank, any money that was received from members for any reason, was on the deposit slip.

Senator MURKOWSKI. Thank you.

Ms. SCHAENEN. In addition, let me add, that in connection with this lawsuit, Mr. Bumpus filed an affidavit which explained the club, how it started, what it does, how it's funded, what its purposes are. Lengthy affidavit to that effect. Approximately 60 members of the group also signed affidavits, affirming that they had read Mr. Bumpus' affidavit and that what it said was true. Those affidavits were filed in the district court in Seattle. The list of members subscribing to Mr. Bumpus' affidavit also went to the examination division here in anchorage and IRS has since been opening up audits left and right from those two lists of individuals who are suspected of not paying taxes properly merely because they belong to the club.

Let me also be very clear that although certainly many, if not most, of the members has taken an aggressive position on their taxpayers as I told you. Some have not, some merely belong to the club because they believe in its goals. They're interested in what they learn in the meetings and they like it. They are members for no other reason. Some are members who joined and later just did not chose to participate for one reason or another.

SOCIETY MEMBERS CONTACTED BY IRS

Senator ABDNOR. What percentage of members have heard from the IRS since they got the letter?

Ms. SCHAENEN. I would say in Alaska virtually 100 percent at this time.

Senator MURKOWSKI. How many members are in the club?

Ms. SCHAENEN. About 100 in all States and about one-half of them perhaps, in Alaska. I think that the only ones who have perhaps not heard from IRS at this time in Alaska are those who are new members who have not had the opportunity to come to their attention yet.

Let me also say that there is no aspect of promoter-customer involved here at all. The club does not seek out new members. There is no promotional literature, there is no attempt to find members to join the club. There are few new members, four or five a year at the most. And they come to the club by recommendation of existing members only and even those that are recommended are not usually accepted. They are interviewed and if it appears that they would not particularly benefit from club membership, they're advised not to join.

SOCIETY CLUB MEMBERSHIP BENEFITS

Senator STEVENS. What is the benefit of the club membership?

Ms. SCHAENEN. The benefit of the club membership to these individuals is that they have been able to take a position which they believe that very wealthy individuals in this country have always been able to take, even though they could not afford it individually. Through the club they have the backing and the moral support as well as the legal support in order to play games, as it were, that perhaps very wealthy individuals have been able to afford very expensive tax lawyers on their own, to do for many years.

Senator STEVENS. I still don't understand. What do they do? What does the club do for the members?

Ms. SCHAENEN. What the club does for the members is hold periodic meetings in which issues of tax law which pertain to them in a general way, not all of them but maybe large groups of them, are discussed and analyzed. I participate in those meetings. I act as general counsel for the club and aside from defending these individuals, I have attempted to research pertinent issues and give them my evaluation as to how they work, if they work, and if they don't.

Senator STEVENS. Does the club take money from the individual members and invest those moneys?

Ms. SCHAENEN. Not at all.

Senator STEVENS. Does the club take money from the individual members and invest those moneys?

Ms. SCHAENEN: Not at all.

Senator STEVENS: Does the club operate any one of these foreign trusts?

Ms. SCHAENEN. No, the club does not. No.

Senator STEVENS. It's an educational function only?

"DUTCH SANDWICH" ACTIVITIES

Ms. SCHAENEN. Educational and I think, at this point, there's a very strong legal aspect to it that I am willing to represent, as part of my retainer from the club, I am willing to represent all the club members in their tax matters that come up as a result of this. So this is an organized defense that none of them could afford as individuals. A great deal of what I do is of benefit to all the members and the club is able to support that kind of help for them. This is the sort of thing—I have attended tax seminars having to do with international taxation and one in particular described what they called the Dutch Sandwich, which involved setting up three foreign corporation for the sole purpose of getting capital gain income belonging to nonresident aliens, out of the United States without paying any tax on it. The people giving the seminar—this is a widely respected group—told us that the IRS knew all about the Dutch Sandwich and approved of all the attributes of it, but it cost about $30,000 to set one up. Obviously, not many individuals can afford to buy themselves a Dutch Sandwich but the individuals of this group by banding together have been able to afford quite a bit more in the way of legal support than they would have ever been able to otherwise.

TAX SHELTER INFORMATION FOR SOCIETY MEMBERS

Senator **Murkowski**. You indicate that your function is somewhat educational. Do you make suggestions for tax shelters as part of your educational function?

Ms. **Schaenen**. Do I personally?

Senator **Murkowski**. No, the club as a unit? Is there an exchange of tax shelter-type information?

Ms. **Schaenen**. Yes.

Senator **Murkowski**. Do you think this is the reason for the alleged harassment by IRS, that they see this as an effort to get the so-called little people together so that they can——

Ms. **Schaenen**. Yes, very much so.

Senator **Murkowski** [continuing]. Receive the benefits of the tax shelter that those that are more affluent can get from attorneys and so forth?

Ms. **Schaenen**. That's exactly correct. The leaders themselves, particularly Mr. Bumpus, attempted to provide the legal backup on his own for quite some time and then realized perhaps, that he was out of his step. The club then sought out the services of an attorney for that and my function has been largely in that area ever since then. And I think there is no question at all but that these individuals organized as a group, are much stronger collectively, than any one of them would be individually, and I believe it is that fact that has caused the undue response from IRS in order to put them under.

FOREIGN TRUST

Aside from all the audits and that sort of thing, there's also been another branch of attack that has to do with propaganda. There has been a practitioner's newsletter circulated in Anchorage, all throughout Alaska, Wisonsin, Oregon, California and elsewhere that I don't know about perhaps, which essentially describes the use of what they call foreign trusts. Legally, I believe, that none of this involves the use of foreign trusts as they are defined in the code but still that's what IRS calls them, defines the system such that it could be recognized by any accountant or lawyer who was approached by any individual. Then alleged that these entities were being used in ways that I think anyone would agree were not legal or at least, very close to the line, and said, "Look at this, this is what they are, this is what they're doing and they're no good and they're illegal and we want to stamp them out." This is before anyone came into any sort of litigation phase, so at the time when the people needed support, every lawyer in the State had already been indoctrinated against them. Accountants had been informed that they were subject to large fines if they did tax returns for these people, and so people who had accountants, long-standing for many years doing their books and so on, had those accountants say, "Well, we're sorry, but we can't do business with you any more." People who went in to apply for bank loans and sought to pledge assets out of a business trust—now these are domestic entities. Very, very few individuals that I'm aware of in this group, has transferred any property into foreign trusts. That's another misconception that is promoted by the IRS. These are domestic business trusts and business trusts are well known for—well, I don't know how well known they are in the general public, but certainly a longstanding business form. They wanted to pledge assets held by a business trust in order to obtain a bank loan. The bank said, "No, unless you're willing to transfer these asset back into your own name, we won't lend money to you because IRS says they're no good."

Mr. Huff here is going to tell you——

Well, why don't you——

Senator ABDNOR. We better kind of move this along. Dr. Pauli and Mr. Huff are both going to testify, are they not?

Ms. SCHAENEN. Yes.

STATEMENT OF GLENN HUFF

Senator ABDNOR. Mr. Huff, why don't you go ahead.

Mr. HUFF. Thank you Senator.

My name is Glenn Huff, I live in Wasilla, my address is box 2240. I'm the executive trustee of Baker Co., and this spring for Baker Co., I decided to sell a piece of real estate located in Homer, Alaska. so I contacted the real estate company, the Land Market, and told them I'd like to sell this piece of property, and they wrote a letter back to me and it had a postscript on it and it says:

> When our preliminary research was completed, we discovered a problem concerning title. For your information, we will pass on the quote from the title company, Kachemak Bay Title.

The quote is this:

> We cannot insure property which comes from these business trusts. They are considered by the IRS to be illegal and therefore the title companies will not insure. Please advise if you wish us to do anything further. I understand the remedy to this situation is a quit-claim deed from Baker Co., to yourself, again, please advise.

So I thought it would be prudent to find out the background of why the title company will not insure title, so I asked the real estate agent to supply me with something from the title company. I have a letter, dated June 12, that was written by Kachemak Bay Title to the Land Market, the real estate agent I had asked to sell my property.

It says:

> Dear Rita, in response to your request regarding our company policy insuring property which is vested through a business trust, it is our company policy not to insure these trusts or one vested through. These trusts are not recognized by the Internal Revenue and therefore we cannot recognize them as a legal entity. In order to acquire or sell property, there must be a legal entity such as an individual, corporation, or partnership. We hope this will help in your understanding of the problem.

Subsequent to that letter, I have received an offer and I accepted the offer for sale of this property. And now, I have a communication from the real estate agent with a preliminary commitment for title insurance and on the bottom its says:

> The necessity of providing this office prior to closing, copies of trust agreements establishing Abel Co. a trust organization, and Baker Co. a trust organization, and proof that these trusts qualify as legal entities.

So now it appears for me to sell this property, I have to somehow prove that a business trust is a legal entity.

And this I just received and this is where I'm at and it appears to me that I've been dealing with business trusts since 1977, and

I've filed tax returns and I've received nothing back from the IRS saying, hey, you filed a tax return on an illegal entity, but they go around telling the business community that they are illegal. And I have these letters and you have them in your file.

Ms. SCHAENEN. Now, this is only an example, of course, and many individuals have run up against problems of this type. I have been asked to supply letters for individuals stating that business trusts are legal entities. Well, of course they are; there was a Supreme Court case last year that reaffirmed that. They're a common law form of business association that go back many, many years, and they have been recognized in the State of Alaska; many States have statutues dealing with them. There's no question but what they are legal entities and IRS doesn't even really argue in the Tax Court situation that they are not. And yet this kind of information has been widely circulated and these individuals, Mr. Huff and many others like him, have run into endless obstacles in just trying to do their normal day-to-day business because of it.

Now, Dr. Pauli who is with me today, has been through a very lengthy procedure in dealing with the IRS. A number of the materials that Dr. Pauli will be discussing are also submitted to you as part of the packet that I handed to you and I will ask him at this time to describe his experiences, extending over a period of years now.

Senator ABDNOR. Dr. Pauli, for the record, what's your first name?

STATEMENT OF DR. RICHARD PAULI

Dr. PAULI. My name is Richard Pauli. I've been practicing dentistry in Anchorage for the last 11 years. I have three things that I'm going to present to you and I'll make it brief.

One is a letter requesting certain things under the Privacy Act of, I believe, it's 1974. I received a letter back, a note regarding the Privacy Act. It's in IRS publication 876, telling me what I was entitled to receive, and then a subsequent letter, oh, a couple months later, dated July 1978, saying that I had no right to answers to these—to ask these questions.

Ms. SCHAENEN. Rich, the first letter that you referred to stated a lengthy list of questions there. Do you believe that under the law, you were entitled to an answer to each of these questions from the revenue agents?

Dr. PAULI. I certainly did.

Ms. SCHAENEN. Give the—well, the questions are before the Senators.

Does the notice that IRS sent to you, that litle publication, 876, I believe it is, does that indicate to you that you are entitled to answers to at least substantially all the questions that you asked?

Dr. PAULI. Yes, it does. It says—yes, it does.

Ms. SCHAENEN. Now, did you receive that publication 876 along with that letter telling you that you were not going to get any answers?

Dr. PAULI. I think I received it before.

Ms. SCHAENEN. Before. But that letter clearly says then that they are not in fact, even though they recognize that they are required by law to answer these questions, that they are not going to answer them?

Dr. **Pauli**. Right.

Senator **Murkowski**. Is that in the record, the letter from IRS in response to these lengthy lists of questions that he asked?

Ms. **Schaenen**. Yes, you should find it directly behind the list of questions.

Senator **Murkowski**. Is that the letter from Henry R.——

Ms. **Schaenen**. Viciendo.

Senator **Murkowski**. Viciendo, dated July 19?

Ms. **Schaenen**. Yes.

Senator **Murkowski**. And you're referring to the statement that, "The Internal Revenue Code is not subject to any preconditions which you have imposed." Is that your interpretation of their refusal to respond to those 29 questions? Is that correct?

Ms. **Schaenen**. That's right.

Rich, did you receive the letter in response to your letter?

Dr. **Pauli**. Yes, I did.

FREEDOM OF INFORMATION

Ms. **Schaenen**. Now, how about the freedom of information—first of all, would you tell the Senators, why did you send in a freedom of information request in the first place?

Dr. **Pauli**. Basically to establish where the IRS was coming from, whether they were interested in me from a civil standpoint or from a criminal standpoint. They were getting pretty heavyhanded with people—I was primarily interested whether they were investigating me from a civil standpoint or a criminal standpoint.

Ms. **Schaenen**. Were you aware at that time, that IRS was focusing on members—first of all, I don't believe you've said whether you're a member of this group.

Dr. **Pauli**. Yes, I am. I'm a member of the American Tax Education Society. Quite a few of the members were undergoing the same type of treatment that I was receiving and I just wanted to clarify where they were coming from in relation to me. So we initiated not only these under the Privacy Act, but the freedom of information requests. Regarding our freedom of information, it took us over 2 years collecting all the data and then we had to appeal several times and they apparently lost our records a couple of times.

Ms. **Schaenen**. How long did it take you to get the initial response to your freedom of information request?

Dr. **Pauli**. Let me see. It was quite a while, it was well over their alloted time.

Ms. **Schaenen**. Was it over a year?

Dr. **Pauli**. I think it was over a year; 11 months, I believe, so——

Ms. **Schaenen**. Let me point out that there is a letter from Bruce Kinney in the third packet of information having to do with Dr. Pauli that states his awareness that there had been no compliance with the Freedom of Information Act. Apparently, then, he hustled somebody on to the case and got an answer.

Dr. **Pauli**. This was after writing to Senators Stevens and Gravel and Congressman Young asking them to urge Mr. Kinney and his companions to answer these freedom of information requests.

Ms. **Schaenen**. There was a document withheld, correct?

Dr. PAULI. Yes, there was.

Ms. SCHAENEN. And you filed an appeal with respect to that?

Dr. PAULI. Twice I did.

Ms. SCHAENEN. How long did it take you to get your appeal?

Dr. PAULI. It took 2 years total time.

Ms. SCHAENEN. During that time, was IRS continuing in their efforts to audit you?

Dr. PAULI. Yes, they were. They were not interested in clarifying this. They wanted to proceed with what they were doing which takes us to the next series of letters I have in front of me.

I received a letter from Mr. Kinney on September 26, 1979, making an appointment for me a few days later trying to clarify a few of the tax audits, I guess, that have been going on. He also said:

> I would like to notify you at this time that I have also—I will also have your 1978 income tax returns and the fiduciary income tax returns of Lakeside Investment Trusts, and in December 31, 1977 and December 31, 1978.

EXCERPTS FROM CORRESPONDENCE

Ms. SCHAENEN. What is the date of that letter?

Dr. PAULI. That was September 26, 1979. OK, so that's——

Ms. SCHAENEN. And when did he want to examine them?

Dr. PAULI. He wanted to examine them on October 4 and he told me, he said:

> I am notifying you now that I will not allow you to delay the audit and if you continue to do so, I will have no alternative but to proceed on the basis of the information available to me. This would include disallowing the items I asked you to support in our correspondence.

He proceeded, "In other words, on two"——

Senator MURKOWSKI. Excuse me. Was that in response to his letter indicating that you had failed to appear at two agreed upon appointments prior to that?

Dr. PAULI. No, I had never failed to appear to one of his appointments.

Senator MURKOWSKI. Do you take issue with the statement in his letter, "Two appointments have been made and set up with you in the past and you canceled both appointments?

Dr. PAULI. I believe, Senator, in a few pages below that, there's a letter that I've answered to Mr. Kinney. I'll read it to you.

> In receipt of your letter dated September 26, 1979, you made several statements that need clarification. You stated that I had canceled two appointments. This was false. You stated that I was trying to delay the series of examinations. This was false. It seems that after waiting for almost 1 year for my freedom of information request, I finally had to write to my Senators and Congressman to speed you up. You have also openly refused to answer certain questions authorized by the Privacy Act of 1974 and other related court cases. You notified me of desire to audit my 1978 personal income tax return in 9 days or else you would disallow certain legitimate deductions. For reasons unknown to me Mr. Kinney, you are attempting to delay the examination of my returns by your noncompliance with the FOIA Act and the Privacy Act of 1974. Your attempts at harassment and acts of bad faith leave me to believe you're not willing to make a clean and fair audit. Despite this lack of respect for the law and my rights, I am still willing to meet with you at a mutually agreed time but first I am requesting Freedom of Information Act update * * *.

So on and so forth.

He went ahead, I think, about 15 days later and disallowed everything and gave me a 30-day letter and a couple months later, a 90-day letter for three times what I had—my practice had grossed in that period of time. So that's my experience with them now.

I have a petition in Tax Court right now and I'm waiting to go to court.

Ms. SCHAENEN. Dr. Pauli's situation again, is typical of what many members have been up against. There have been broad accusations leveled against this group that they have sought to delay audits, that they have tried to hide their transactions, not produce their documentation for examination. In fact, what has happened is that they were up against a very unusual situation. They attempted to use the provisions of the law in order to find out what sort of situation they were up against. They ran into great difficulty in obtaining the information they needed. IRS continued to press them throughout that time for audits and then cited their unwillingness to comply during that period as refusal to show their records.

Let me emphasize again that many of the members of this group have made full disclosure of their financial transactions to IRS and that no one at any time has tried to hide their transactions. And all the records do exist and they are produced at a very rapid speed.

Dr. PAULI. There's also a letter there—excuse me, Jean—dated October 8, 1979 from Lakeside Investments to Mr. Kinney. If you'd like, I'd read it to you. It won't take more than 1 minute:

> DEAR MR. KINNEY. I have received your undated letter on September 26, 1979. In this initial correspondence to Lakeside Investments, you informed me that you intended to audit Lakeside Investments, 1977-1978 returns; that we had 1½ weeks to meet, produce and substantiate certain deductions. You also stated that I had canceled two appointments and that if I had delayed this audit, you would disallow these deductions. If frankly baffles me, Mr. Kinney, that you could initiate an audit, demand a meeting date, threaten Lakeside Investments with disallowing certain deductions, all in a period of 9 days. Is this some new form of governmental efficiency or just good old fashioned IRS harassment. Despite your attempts of harassment and acts of bad faith, I will be happy to meet with you * * *.

So on and so forth, and he never set up another meeting date, he just issued me a 30-day and a 90-day letter.

PERSONAL AUDITS

Senator STEVENS. I'm at a loss here, Mr. Chairman.

Are you—were these to audit you personally or audit a trust that you had set up?

Dr. PAULI. They were auditing me personally and my dental corporation and a couple of trusts organizations that I was trustee over. So they had initiated several different audits on myself and related entities.

LAKESIDE INVESTMENT TRUST

Senator STEVENS. And this, I noticed there's some—Lake-something, what's the entity that you had?

Dr. PAULI. Lakeside Investments.

Senator STEVENS. Was that a trust that you had organized?

Dr. PAULI. Yes, it was. It was a trust that I was a trustee over. I had not organized it.

Senator STEVENS. You were a trustee of that?

Dr. PAULI. Yes, I was.

Senator STEVENS. Did you form it?

Dr. PAULI. No, I did not.

Senator STEVENS. But did it have other members of the trust?

Dr. PAULI. No.

Senator STEVENS. I'm trying to get to this. I've heard a lot about foreign trusts that people have organized. Was this one of those foreign trusts?

Dr. PAULI. No, this was a domestic trust.

Ms. SCHAENEN. A domestic business trust. Let's be clear about that. A business trust is very different from a trust. It is——

Senator STEVENS. Organized for what purpose?

Ms. SCHAENEN. For the purpose of doing business.

Dr. PAULI. It's property management; real estate management was its prime function.

Ms. SCHAENEN. A business trust has no purpose to conserve property for the benefit of beneficiaries. It is a form of business much more analagous to a corporation than to a trust.

Senator STEVENS. I note here Mr. Kinney said that they had disallowed $163,500 for professional services, $441,447 for management fees, $20,000 for returns and allowances, $12,000 plus for seminar dues, $2,000 for advisory trustee fees and administrative fees and some fiduciary fees, $12,000. Were those related to this business trust?

Dr. PAULI. That was related to Latouche Dental Services, a dental company, dental management company, and to Lakeside Investments. He was lumping everything together, the way it appeared to me.

Senator STEVENS. He refers to individual tax returns or corporate tax returns, professional corporations, and the Lakeside Investments for the year; he put them all together, is that right?

Dr. PAULI. Yes. In this letter, I believe, October 17, you're looking at, he did.

Ms. SCHAENEN. In general, in Dr. Pauli's instances, as well as all the others, all transactions involving the business trusts have been disallowed without respect to what they were for. And as to which entities each individual involved in this group—or IRS has sought to audit each individual and every entity, every business entity that they have anything to do with, whether it be a business trust, corporation, or whatever partnerships, as well. Just a total audit of all the financial—anything that these individuals touch financially.

Senator MURKOWSKI. Ms. Schaenen, you indicated, I believe, that you had about 100 members in the American Tax Education Society?

Ms. SCHAENEN. Yes.

Senator MURKOWSKI. And about 50 of them are in Alaska?

Ms. SCHAENEN. That's a guess and some of them are active and some of them are inactive.

Senator MURKOWSKI. So the other 50 are concentrated where, roughly?

Ms. SCHAENEN. Probably most of the rest are in California, but there are——

Senator MURKOWSKI. Is there an exchange of information with regards to——

Ms. SCHAENEN. Oh, absolutely.

Senator MURKOWSKI [continuing]. IRS harassment? Does this occur in California or is it unique to the membership in Alaska?

Ms. SCHAENEN. It has not occurred yet. I have seen printed memoranda and so forth that indicate that a general attack of the same type is contemplated in the State of California. Obviously, it would not be so easy to carry out as it is in Alaska.

Senator MURKOWSKI. How long has the group been in operation?

Ms. SCHAENEN. Since 1978.

Senator MURKOWSKI. And it started in California and moved up here?

Ms. SCHAENEN. No, I think it started here in that Mr. Bumpus and Mr. Huff, who were primary factors in organizing the group were in Alaska. But there were a number of California members who came into the group at that time.

Senator MURKOWSKI. Do you pay dues to the organization?

Ms. SCHAENEN. At this time there is a membership dues, yes.

Senator MURKOWSKI. How much are they?

Ms. SCHAENEN. This year's, since this year there's extremely heavy litigation involved, the dues are $2,000. Last year the dues were——

Senator MURKOWSKI. Are those deductible?

Ms. SCHAENEN. It is my position that they are.

Senator MURKOWSKI. Thank you.

Senator STEVENS. No further questions.

Senator ABDNOR. Thank you. We appreciate you coming here today.

[Reference material of Dr. Richard Pauli follows:]

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

APR 8 - 1981

BRUCE RIFKIN, Clerk
By________________ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AMERICAN TAX EDUCATION SOCIETY, Plaintiff,	)	NO. C80-123M
v.	)	
UNITED STATES OF AMERICA, et al., Defendants.	)	ORDER

THIS MATTER comes before the Court on defendants' motion to dismiss plaintiff's complaint with prejudice or alternatively, for an order granting summary judgment in defendants' favor.

I.

RELEVANT FACTS

Plaintiff, American Tax Education Society (ATES), is an unincorporated association which views itself as an educational, service-oriented political group, concerned with lawful resistance to federal taxation.[1/]

[1/] Affidavit of Charles H. Bumpus; Complaint, paragraphs I and III.

Defendants are the Internal Revenue Service (IRS) Commissioner and a host of IRS employees, all of whom are or have been involved in an on-going investigation into the potential tax liabilities of individual ATES members.

This investigation has apparently focused on auditing those ATES members who have allegedly sought to eliminate income from their tax returns by creating and utilizing entities commonly referred to as "foreign trust organizations."

This lawsuit was filed in response to the IRS probe of ATES' members. Without reciting the complaint in full, ATES alleges, inter alia, that the defendants: through an enforcement program known as Project Tax Shelter (PTS), have pursued strategies designed to disrupt ATES' activities, in an effort to discourage participation and membership in the group; through PTS have, and continue, to infringe on ATES' right of free association by engaging in illegal wiretaps, surveillance activities, tape recordings and interference with plaintiff's mail; selected ATES members for audit solely on the basis of their membership in ATES; published and distributed false information concerning ATES to various accountants and attorneys in an effort to discourage their assistance, representation or participation with ATES; contacted financial institutions in an effort to deter them from dealing with ATES; initiated criminal investigations of ATES members without good cause; misused statutory power to conduct audits for unauthorized purposes; and obtained administrative summonses for illegitimate purposes.

Plaintiff contends that these acts are discriminatory, arbitrary, capricious and unreasonable. Said acts are alleged to violate the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution, as well as the

Administrative Procedures Act, 5 U.S.C. §552(a); Interception and Disclosure of Wire and Oral Communications Act, 18 U.S.C. §2510, et seq.; Civil Rights Act, 42 U.S.C. §1983; and various provisions of the IRS Code.

ATES has requested relief and judgment as follows:

1. That the Court find and declare that tactics used by the Internal Revenue Service in Project Tax Shelter are and have been illegal, discriminatory and in violation of plaintiff's civil and constitutional rights, and that evidence gathered through use of such tactics, or the fruits of such evidence may not be used against any plaintiff in any civil or criminal proceeding or for any purpose in furthering Project Tax Shelter.

2. That the defendants be temporarily and permanently enjoined from:

a. Interference in any way with the Society's mail;

b. Utilizing any form of electronic surveillance to overhear or record any conversations, discussions, or transactions of the Society or its members in their homes or offices or by telephone or at any Society meeting, convention, workshop or gathering not open to the public;

c. Attempting to dissuade others from joining or participating in the Society or conducting business or professional relations with the Society or its members;

d. Utilizing the AIMS program or other means of selecting subjects of IRS audits unless it can be shown that such means does not discriminate on the basis of Society membership;

e. Continuing their criminal investigation of the Society's leaders and members, or pursuing any criminal sanctions against them;

f. Continuing any audits of Society members who were selected for audit by discriminatory means or against whom illegal tactics have been used,

g. Pursuing collection activities against any member selected for audit by discriminatory or illegal means or audited by use of illegal tactics; and

h. Interfering in any way with the free association rights of the Society and its members.

3. That the Court issue its Order that defendants shall surrender and give over to the Society or any member affected, all information illegally obtained by mail interference, electronic or other surveillance or illegal audit or summons proceedings, all copies made thereof in any form, all documents or records of any kind created therefrom, and any other artifacts of such legally obtained information.

4. For judgment against the defendants, jointly and severally, for amounts to be determined at trial for damages and expenses incurred in defending and protecting against defendants' illegal acts, a reasonable sum for attorney fees and expenses for violation of personal, Constitutional and civil rights as alleged above and for costs and disbursements herein and for such other and further relief as may be just and appropriate.

II.

DISCUSSION AND FINDINGS

Defendants submit various arguments and legal theories in support of their motion. Each will be dealt with on a separate basis, as follows:

A. Injunctive Relief

Title 26, United States Code, Section 7421(a), commonly known as the Anti-Injunction Act, reads as follows:

> No suit for the purpose of restraining
> the assessment or collection of any
> tax shall be maintained in any Court
> by any person . . ..

The purpose behind the Anti-Injunction Act is to protect the government's need to assess and collect taxes as expeditiously as is possible, with a minimum of pre-enforcement judicial interference.[2/]

The Act's practical effect bars an individual from pursuing injunctive relief which would restrain the IRS' assessment and collection of taxes until such time as its investigation is completed.[3/]

The injunctive relief requested in this case would effectively act to enjoin the IRS' ongoing investigation into the potential tax liabilities of various ATES members. Proper assessment and collection of these persons' taxes would be restrained. It is precisely this type of judicial hinderance or intermeddling into the collection of taxes that the Act was intended to prohibit.

While not critical to the Court's decision on this issue, it should be noted that dismissal of plaintiff's request for injunctive relief in no way denies plaintiff access to further judicial

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2/ Bob Jones University v. Simon, 416 U.S. 725, 736 (1973); Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 7 (1962).

3/ Black v. United States, 534 F.2d 524 (2d Cir. 1976): Campbell v. Guetersloh, 287 F.2d 878 (5th Cir. 1961); Krause v. United States Government Treasury Department Internal Revenue Service, 380 F.Supp. 219 (C.D. Cal. 1974).

review. As discussed below, plaintiff's claim for money damages remain before this Court. Should the investigation result in either criminal or civil assessments, plaintiff's claims may be renewed at that time in those actions.

Finding that the Anti-Injunction Act applies, ATES may avoid its prohibition only by proving two factors:

1. Equity jurisdiction is present, that is, ATES has or will suffer irreparable injury for which legal remedies are inadequate, and

2. Plaintiff is certain to succeed on the merits.[4/]

Plaintiff has failed to satisfy each requirement in the following respects:

1. Plaintiff will not suffer irreparable injury for which legal remedies are inadequate. By their own admission, individual members of ATES banded together for the avowed purpose of legally avoiding federal taxation.[5/] In short, ATES' sole existence is designed to reduce, as much as is legally permissible, the amount of tax dollars paid by ATES members into the United States Treasury. Accordingly, should plaintiff prove that the defendants have infringed on ATES' Constitutional rights, recovery of monetary damages will provide an adequate remedy.

2. To determine whether ATES is certain to prevail on the merits. the Court must look to evidence presented at the time of the lawsuit.[6/]

[4/] Bob Jones, supra; and Williams Packing, supra.

[5/] See, Affidavit of Charles H. Bumpus at 3; Subscription to the Affidavit of Charles H. Bumpus by members of ATES (filed April 29, 1980).

[6/] Williams Packing, supra; Thrower v. Miller, 440 F.2d 1186 (9th Cir. 1971); Madrigal v. District Director of Internal Revenue Service, 416 F.Supp. 405 (C.D. Cal. 1976).

The evidence before the Court consists of plaintiff's complaint, memoranda by both parties on summary judgment, affidavits of ATES' attorney and members, affidavits of the defendant IRS employees and the balance of the file.

It is clear from a review of the affidavits and memoranda that numerous issues of fact exist. There is no indication that plaintiff is certain to succeed on these material issues, nor on the merits.

Finding that the Anti-Injunction Act was intended to prohibit injunctive relief sought in this case, and further, that the plaintiff has failed to come within the exception to the Act, those portions of the complaint seeking either a temporary or permanent injunction, to wit: Allegation XIV, Paragraph A, Sections (1), (2), (3), (4), (5), (6), (7) and Pargraph B are accordingly dismissed.

B. Declaratory Relief

The provisions of the Declaratory Judgment Act, 28 U.S.C. §2201, are conterminous with those of the Anti-Injunction Act.[7/] Finding that the Anti-Injunction Act bars the requested injunctive relief, plaintiff's claims requesting declaratory relief are likewise dismissed pursuant to 28 U.S.C. §2201.

C. Civil Rights Act, 42 U.S.C. §1983

Title 42, United States Code, Section 1983 provides redress for deprivation of civil rights under

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[7/] Eastern Kentucky Welfare Rights Organization v. Simon, 506 F.2d 1278, 1283-86 (D.C. Cir. 1974); vacated on other grounds, 426 U.S. 26; Lugo v. Simon, 453 F.Supp. 677, 690 (N.D. Ohio 1978); and McGlotter v. Connally, 338 F.Supp. 448, 453, n. 23 (D.D.C. 1972).

color of state law but does not apply when the deprivation is alleged to have occurred under color of federal law.[8]

Plaintiff's complaint speaks solely in terms of federal officers, acting under color of federal law. Those sections of plaintiff's complaint claiming civil rights violations under Section 1983 are accordingly dismissed.

D. Requested Judgment for Money Damages

Defendants urge dismissal of plaintiff's claims for monetary damages on three distinct grounds: (1) doctrine of sovereign immunity, (2) official immunity and (3) improper venue.

1. Doctrine of Sovereign Immunity

It is well-established that where a judgment obtained against an employee of the United States Government, as a result of acts properly performed within his scope of employment, would expend itself of the public treasury, the lawsuit is deemed to be against the sovereign and unless otherwise provided for, barred under the doctrine of sovereign immunity.[9]

Without deciding whether sovereign immunity is a proper defense to the instant lawsuit, it is apparent that the presence of numerous material issues of fact render the doctrine inapplicable at this time.

Should the Court find that this action is truly against the sovereign, the doctrine bars suit unless it is established that (1) the defendant IRS employees acted beyond their statutory power or (2) even if properly within their statutory power, the powers themselves or the manner in which they were exercised are Constitutionally void.[10/]

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[8] Seibert v. Baptist, 594 F.2d 423 (5th Cir. 1979); and Roots v. Callahan, 475 F.2d 751 (5th Cir. 1973).

[9] Dugan v. Rank, 372 U.S. 609, 620 (1963).

Plaintiff's complaint, supported by affidavits of ATES officers and members, allege that the defendants engaged in acts which, if proven at trial, are flagrant violations of plaintiff's Constitutional rights.

Contradictory affidavits by defendants assert that all acts have at all times been taken in good faith, upon reasonable grounds and within the proper scope of their employment.

The Court is consequently left with conflicting evidence as to the propriety of the manner in which the defendants have carried out their powers. To prohibit plaintiff from maintaining this action on the basis of sovereign immunity would be premature, in light of the issues of fact surrounding plaintiff's claims that the defendants have carried out this investigation in an unconstitutional fashion.

2. Official Immunity

Damage suits involving Constitutional violations need not proceed to trial, but can be terminated by a properly supported motion for summary judgment based on a defense of official immunity.[11/]

Defendants present three arguments in support of official immunity: (1) plaintiff's complaint alleges only common law torts and federal officers are "absolutely immune" from suits for damages from those common law torts performed within their scope of duty;

[10/] Id. at 622-23.

[11/] Butz v. Economore, 438 U.S. 478 (1977)

(2) even if plaintiff's complaint sounds of Constitutional violations, IRS employees are within a class of officials whose special functions require absolute immunity;

(3) at the very least, defendants are entitled to a qualified immunity from damage suits arising from acts performed in the course of official business which result in Constitutional infractions, so long as (a) there existed reasonable grounds for the belief that the action was appropriate and (b) the officer acted in good faith. 12/

Defendants' arguments are not persuasive for the following reasons:

(1) Plaintiff's complaint plainly asserts violations of fundamental Constitutional rights. It is without question that federal officers, and particularly the defendants herein, are not absolutely immune from liability for such infringements. 13/

(2) In an effort to gain immunity, defendants liken themselves to a class of public officials whose functions require absolute immunity, even as against Constitutional claims. 14/ Members of this "protected" class include judges, federal prosecutors, federal hearing examiners and administrative law judges. Unlike the defendants, these individuals are participants inside the judicial process. The defendants are not "quasi-judicial"

12/ *Mark v. Groff*, 521 F.2d 1376, 1379-80 (9th Cir. 1975), if acts are not within an employee's course of official conduct, defendant is not entitled to qualified immunity; *Schuer v. Rhodes*, 416 U.S. 232 (1973); and *Granger v. Marek*, 583 F.2d 781, 784 (6th Cir. 1978).

13/ *Butz*, *supra*, at 485.

14/ *Id.* at 508.

officers and therefore, should not be entitled to similar immunity. To hold otherwise would set a dangerous precedent, licensing IRS agents to commit unconstitutional acts without fear of reproach.

(3) While the defendants contend that all acts performed in the investigation of ATES members have been properly executed within the agents' scope of employment, it is not evident, based on the conflicting affidavits discussed above, that such acts were taken in good faith and on reasonable grounds. Proper resolution of these issues require factual determinations based on evidence which is not presently before the Court. Further fact-finding at trial is appropriate.

3. Improper Venue as to Certain Defendants for Plaintiff's Claims for Money Damages

Defendants maintain that venue is improper in this district based on the recent Supreme Court decision of Stafford v. Briggs, 444 U.S. 527 (1980). The Court in Stafford held that the venue provisions of 28 U.S.C. §1391(b),[15] as opposed to §1391(e),[16] apply to suits for money damages in which an individual federal officer may be found personally liable.

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[15] Venue is proper only (1) in the judicial district where all of the defendants reside; or (2) in which the claim arose.

[16] Section 1391(e) provides that a civil action in which each defendant is an employee of the United States or agency thereof acting in his official capacity or under color of law may be brought in the judicial district in which (1) a defendant in the action resides, or (2) the cause of action arose.

It is readily apparent that ATES seeks money damages from the defendants in their individual capacity.[17] As such, venue must be established consistent with the provisions of Section 1391(b).

Defendants argue that venue is lacking under Section 1391(b), since the affidavits of many individual defendants indicate that they reside outside of this district.

While defendants' argument is initially attractive, it fails to consider the remaining basis for venue under Section 1391(b), that is, venue is proper in the judicial district in which the claim arose.

Plaintiff has alleged and expects to prove that PTS' headquarters are located within this district, at Seattle, Washington. Assuming this to be true solely for the purposes of this motion, the evidence now before the Court indicates that ATES' claim against PTS arose in Seattle and venue is accordingly proper in this district under Section 1391(b).[18]

Defendants' motion to dismiss plaintiff's complaint on grounds of sovereign immunity, official immunity and improper venue is accordingly DENIED.

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[17] See, Amended Complaint, Section XIV, Paragraph D, "For Judgment against the defendants, jointly and severally for amounts to be determined at trial."

[18] Assuming plaintiff proves PTS headquarters are within this district and that some of the acts alleged or decisions bringing about the alleged acts, were performed at the headquarters, venue is proper. See, Stafford at 4142, n. 11, where venue was proper in the district where CIA headquarters were located as the district where plaintiff's claim arose.

III.

MOTION FOR SUMMARY JUDGMENT

As is apparent from the discussion above, material issues of fact are plentiful. For example, affidavits submitted on behalf of both parties conflict on issues of interference with plaintiff's mail, surveillance activities and unlawful harrassment.

Resolving whether these and similar acts have, in fact, occurred and violated plaintiff's Constitutional rights, requires factual determinations which are unsuitable for summary judgment.

Defendants' motion for summary judgment is DENIED.

IV.

JUDGMENT

In accordance with the above discussion and findings, it is hereby ORDERED:

1. Defendants' motion to dismiss those portions of plaintiff's complaint requesting injunctive relief, declaratory relief, and claiming violations of 42 U.S.C. §1983 is GRANTED.

2. Defendants' motion to dismiss the remainder of plaintiff's complaint based on the doctrine of sovereign immunity, official immunity, or improper venue is DENIED.

3. Defendants' motion for summary judgment is DENIED.

DATED this 7th day of April, 1981.

Walter T. McGovern
WALTER T. McGOVERN
Chief United States District Judge

Form 2039
(Rev. Nov. 1979)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Eugene F. Morton And Patricia J. Morton
7032 Whitehall
Anchorage, Alaska 99502

Internal Revenue District of Anchorage Periods 1978

The Commissioner of Internal Revenue

To RITA CAVANAGH - OPERATIONS OFFICER AND Security National Bank

At Anchorage, Alaska

You are hereby summoned and required to appear before Darwyn Pearl an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data

Please list all accounts, open or closed, that the above-named individual(s) have or had signature authority over, whether in their individual capacity or as agents or fiduciaries for others, during the period January 1, 1976 through December 31, 1979. For each account identified please list the type of account, account name, account number, and the periods the account has been open. Below is a partial list of the entities the above individual(s) may have signature authority over:

Professional Services
Alaska Rentals

Business address and telephone number of Internal Revenue Service officer named above:
310 K Street Anchorage, Alaska 99501 (907) 271-4300

Place and time for appearance:
at 310 k Street Anchorage, Alaska
on the 20th day of OCTOBER, 19 80 at 10:00 o'clock A M.

Issued under authority of the Internal Revenue Code this 17th day of OCTOBER, 19 80

Darwyn L. Pearl — Revenue Agent
Signature of Issuing Officer — Title

Robert A. Jackson — Group Manager
Signature of Approving Officer (if applicable) — Title

Original to be kept by IRS

Form 2039 (Rev. 11-79)

FILED

MAR 1[illegible] 1981

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ________________ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA and
PATRICK C. McGUIRE, DARWYN
PEARL, & JERRY BARNARD,
Revenue Agents of Internal
Revenue Service,

Petitioners,

v.

SHARON OLSON, Procedures
Officer, and ALASK BANK OF
COMMERCE,

Respondents.

No. A 81-57 Civil

ORDER

The United States seeks in this action to enforce certain various summonses issued by the Internal Revenue Service pursuant to 26 U.S.C. §7602(2). The 13 summonses, which are identical, seek the following information:

> Please list all accounts, open or closed, that the above-named individual(s) have or had signature authority over, whether in their individual capacity or as agents or fiduciaries for others, during the period January 1, 1976 through December 31, 1979. For each account identified please list the type of account, account name, account number, and the periods the account has been open. Below is a partial list of the entities the above individual(s) may have signature authority over:

No notice was provided to the "above-named individual(s)" ("the taxpayers") despite the requirement of 26 U.S.C. §7609(a) which provides:

> (a) Notice.-
>
> (1) In general. -If-
>
> (A) any summons described in subsection (c) is served on any person who is a third-party record keeper, and
>
> (B) the summons requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons,
>
> then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 14th day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under subsection (b)(2).

The taxpayers have moved to intervene in this action and to quash the summonses for lack of required notice.

The government argues that the notice provision does not apply because these particular summonses are exempted from the notice provision by virtue of 26 U.S.C. §7609 (a) (4)(B):

> (4) Exceptions. - Paragraph (1) [the notice provision] shall not apply to any summons -
>
> (B) to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, . . .

The legislative history makes clear, however, that this exception applies only "where a summons is issued solely to determine if records exists [sic]," H.R. Rep. No. 94-1515, 94th Cong., 2d Sess. 485, reprinted in 4 U.S. Code Cong. & Adm. News 2897, 4190 (1976). As the legislative history makes clear:

> this [notice] procedure would not apply in cases where the *only* information requested by the Service was whether or not the third-party record keeper had records with respect to a *particular* person (without requesting any information contained in those records).

1976 *U.S. Code Cong. & Adm. News* 3800, [emphasis added.]

The summonses at issue go beyond the scope of this exception. They request a variety of information, not simply "whether or not" the account exists. I conclude the notice exception of Section 7609(a)(4)(B) is inapplicable.

The government also relies on *United States v. Exxon*, 450 F.Supp. 472 (D.Md. 1978) and *United States v. Income Realty and Mortg., Inc.*, 612 F.2d 1224 (10th Cir. 1979) to support its contentions that the notice requirements of Section 7609 do not apply. Those cases turn, however, on the issue of whether the records sought belonged to a third-party record keeper. Here it is clear that the bank is such a third-party record keeper. 26 U.S.C. §7609(a)(3).

I conclude that the summonses at issue are subject to the notice provisions of Section 7609. The taxpayers therefore have a right to intervene in this matter. *See* 26 U.S.C. §7609(b)(1). Because IRS did not give proper notice of the summonses, they cannot be enforced. *See* *United States v. Desert Palace, Inc.*, 43 AFTR 2d 79-1126 (D. Nev. 1979).

The motions to intervene and to quash the summonses are GRANTED.

DATED at Anchorage, Alaska, this 13th day of March, 1981.

JAMES M. FITZGERALD
United States District Judge

Cys: Kibby
Duerre
Schanen

Form 2039
(Rev. Nov. 1979)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Number 1 through 3 as shown below

Internal Revenue District of Anchorage Periods 1978

The Commissioner of Internal Revenue

To Alaska Bank of Commerce Chuck Whitney, Branch liaison officer

At Anchorage, Alaska

You are hereby summoned and required to appear before Darwyn Pearl, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All records as specified below for any and all of the below named individuals(s) or entities for the period(s) January 1, 1977 through October 31, 1980. This includes not only accounts in the names of these persons or entities but also accounts under the signatory control of these individuals or entities.

Individuals or entities:
1) Lee R. And Barbara J. Ellenburg
2) Yukon Services
3) Ellenburg Inc

1. Checking and Savings Accounts maintained, controlled and/or having signatory authority by the above named individual(s) or entities.
   a) Signature cards for open and/or closed accounts maintained during the period(s) shown above.
   b) Bank ledger statements for the period(s) shown above.
   c) Deposit slips and items deposited for all amounts shown on the ledger statements requested in Item No. 1 b.
   d) Canceled checks and withdrawal slips for all amounts shown on the ledger statements requested in Item No. 1 b.
   e) Debit and credit memos for all amounts shown on the ledger statements requested in Item No. 1 b.

See Page 2

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street Anchorage, Alaska 99501 (907) 271-4300

Place and time for appearance:

at 310 K Street Anchorage, Alaska Room 301

on the 15th day of December, 1980 at 10 o'clock A M.

Issued under authority of the Internal Revenue Code this 18th day of November, 1980

Darwyn L Pearl
Signature of Issuing Officer
Revenue Agent
Title

Jackson
Signature of Approving Officer (if applicable)
Group Manager
Title

Original to be kept by IRS

Form 2039 (Rev. 11-79)

2) Time Certificates of Deposits.

3) Cashier's checks and/or money orders purchased by or in the names shown above.

4) Applications to purchase cashier's checks and/or money orders. Items including checks, cash receipts, etc., used to purchase cashier's checks and/or money orders.

5) Loan records to include:

    a) Loan application forms, financial statements, tax returns and related verification documents.

    b) Loan ledger cards or any other document which shows dates of payments, amounts paid, and/or allocation of payments as to principal and interest.

    c) Loan agreements.

    d) Cashier's or other instruments used to disburse proceeds of loans.

    e) Checks, cash receipts memo or other instruments used to make payments on loans.

    f) Documents disclosing security for loans including mortgages, chattel mortgages, deeds of trust and notes, etc.

    g) Correspondence, memoranda and notes relative to the loans.

6) Escrow and Collection account records to include:

    a) Contracts or agreements.

    b) Names and addresses of parties to escrow.

    c) Account ledger disclosing amount collected and distribution between principal and interest and other allocations.

    d) Disbursement records including: bank cashier's checks, drafts, transfers, loan repayments, etc.

    e) Items including checks, cash receipts, etc., used to make payments to escrow or collection accounts.

7) Safe deposit box application and records of entry.

8) Forms 1099.

9) Letters of credit and related documents.

Manual Supplement

Department of the Treasury
Internal Revenue Service

January 31, 1980

42G-404
44G-86
8G-45

Expediting Cases in the Tax Shelter Program

Section 1. Purpose

This supplement provides procedures for coordinating and expediting Tax Shelter Program cases through the administrative appeals process.

Section 2. Background

.01 Under present procedures, generally, a 30-day letter is issued to a representative number of investors in unagreed shelter cases. The remaining related cases are held in suspense pending the outcome of the representative cases.

.02 If a settlement is not reached on the representative cases at the Appeals level, notices of deficiency are issued. Each case is docketed and either goes to trial or is settled before trial. This process is repeated until all related cases are disposed of.

.03 This process has resulted in an ever-growing inventory of suspense cases, numerous appeals conferences on the same issue, and duplication in preparing cases for trial.

Section 3. Scope

.01 These procedures have been developed for cases which are in the Tax Shelter Program (MS 42G-376, and MS CR 86-11 formerly CR 8(24)G-145, dated December 12, 1977).

.02 The objectives of these procedures are:

1 To provide for the identification and prompt movement of abusive tax shelter cases for litigation (litigating vehicle), and

2 To provide for prompt and orderly movement of those tax shelter cases not selected as litigating vehicles from Examination to Appeals through the Appeals Coordinated Issue Program and, if necessary, to trial.

.03 If this procedure produces workload in some Appeals offices which exceeds their authorized staffing, Examination will provide technical and clerical resources, through details to Appeals, as necessary, to accomplish the objectives in 3.02 above. The Chief, Examination Division will coordinate with the Chief, Appeals Office in determining specific resource needs.

Section 4. Identification of Litigating Vehicles

.01 Each District Director will designate an Examination Division tax shelter representative. (In streamlined districts, the designated Examination representative for the prime district can also be the representative for the streamlined district.) In most cases, the Examination designee should be the District Tax Shelter Coordinator. Each Chief, Appeals Office will designate a tax shelter representative for each Appeals office. Similarly, each District Counsel will designate a tax shelter representative.

.02 A summarysheet will be developed locally by the tax shelter representatives for use in summarizing tax shelter case information to identify "litigating vehicles." For purposes of the Tax Shelter Program, a "litigating vehicle" relates to a given promotion (as opposed to an individual case) that is abusive when the substantial tax benefits claimed by the participants are compared to the economic reality of the transaction. These sheets will be completed on each tax shelter promotion regardless of whether an agreement has been obtained from any of the participants.

.03 A key case is the lead or prime tax shelter case involved in the promotion. It could be a partnership, corporation, 1120S corporation, individual, fiduciary, or other tax return. The key district is where the key case is located. A summarysheet will be completed and attached to the top outside of the case file by the key district examiner when the case is closed.

.04 In syndications, if the promoter is a participant in the tax shelter promotion and the promoter's return is under examination, the key district examiner will complete a summarysheet only on the promoter. If the promoter's return is not under examination, the key district examiner will assure the summarysheets are completed on all investors.

.05 All key cases are subject to mandatory review. The Review Staff will hold all key cases for a weekly concurrent screening by the tax shelter representatives from Examination, Appeals, and Counsel. Each key case will tentatively be identified by the tax shelter representatives as either a litigating vehicle or Appeals coordinated issue case by stamping "Litigating Vehicle" or "Appeals Coordinated Issue" in the upper right hand corner of the summarysheet. District Counsel will make the final decision as to whether or not a particular key case is designated as a "Litigating Vehicle." If there are no key cases for the week, Review Staff will notify the designated representative for Examination who will notify the representatives from Appeals and Counsel.

.06 A summarysheet will be completed for each key case in the Review Staff and Appeals inventories on the date of this Manual Supplement. These sheets will be submitted to the tax shelter representatives for identification as either a litigating vehicle or Appeals coordinated issue case and stamped accordingly, as above. The sheets will be returned and associated with the file.

.07 For key cases identified as "Appeals Coordinated Issues," the Appeals tax shelter representative will immediately prepare a memorandum for signature of the Chief, Appeals Office to the Director, Appeals Division, National Office, CP:AP, recommending inclusion as an appeals coordinated issue. Each key case will be identified by name, Taxpayer Identification Number (TIN), type of tax shelter, and servicing Appeals office.

.08 The Director, Appeals Division, will advise each Regional Director of Appeals by memorandum of the identified tax shelter coordinated issue, entities involved and the designated Appeals coordinator, and initiate appropriate revision to IRM 8(24)00 and Part VIII Law Enforcement Manual (to be issued). The tax shelter representative—Appeals, will keep the representatives from Examination and Counsel informed as to when coordinated issues are designated.

Section 5. Litigating Vehicles—Examination

.01 The Review Staff will stamp "Tax Shelter Litigating Vehicle" on the outside of the case file for each key case identified as litigating vehicles.

.02 Except as otherwise provided in Section 9.05, Review will immediately issue special 30-day letters (Letter 1389(DO)) to all investors in the key district. At the same time, the key district will initiate Form 918-B (Status of Examination) procedures to the related districts. The Form 918-B will have a copy of the examination report on the key district entity with the following statement attached to it:

> This case (key taxpayer's name) has been identified as involved in a litigating vehicle. Move this taxpayer's case immediately into 30-day status. Use the special 30-day letter (Letter 1389(DO)). Provide the address and telephone number of the Appeals Office which has jurisdiction of the key case.

.03 Upon receipt of Form 918-B by the related district, the taxpayer will be contacted and offered the opportunity to agree to the tax shelter adjustment. If the taxpayer does not agree, the case will be sent to Review Staff. Form 3198 (Special Handling Notice) will be attached to the outside folder marked "Related to a Tax Shelter Litigating Vehicle." Review Staff will immediately issue the special 30-day letter.

.04 If the taxpayer files a protest in response to the special 30-day letter, the case will be forwarded to Appeals. If the taxpayer fails to file a protest, the notice of deficiency will be issued. (IRM 4461.12:(2) will be followed concerning statutory notice language.)

Section 6. Litigating Vehicle Cases—Appeals

.01 Upon receipt of the case of a taxpayer involved in a litigating vehicle in the servicing Appeals Office, Appeals will contact the taxpayer within 10 days and schedule a conference within 30 days. In the absence of full concession by the taxpayer or significant new facts or legal argument, a notice of deficiency will be issued. See Policy Statements P-8-1 and P-8-47.

.02 If significant new facts or legal argument is presented which in the judgment of the Appeals Officer would change the identification of the shelter issue from "Litigating Vehicle" to "Appeals Coordinated Issue," Counsel will be consulted before the classification is changed. If the case has been reclassified from "Litigating Vehicle" to "Appeals Coordinated Issue," the Chief, Appeals Office will notify the Director, Appeals Division of this change and recommend the issue and entity be identified as an Appeals coordinated issue (See 4.07 above).

.03 Upon closing of the reclassified case, whether agreed or unagreed, Appeals will initiate Form 918–A (Notice of Examination of Fiduciary, Partnership, or Small Business Corporations), Part 2, attaching a copy of the Appeals supporting statement which clearly identifies the acceptable basis of settlement of the tax shelter issue.

.04 Upon receipt of the case by a related Appeals office, they will ordinarily follow the determination of the servicing Appeals office as set forth in the supporting statement. If no supporting statement is in the file, they should contact the servicing Appeals office (as identified in Form 918–B) for guidance.

Section 7. Tax Shelter Appeals Coordinated Issue Cases—Examination

.01 All key cases tentatively identified as Appeals coordinated issue cases will have "Tax Shelter Appeals Coordinated Issue" stamped on the outside of the case file by the Review Staff.

.02 These key cases will be held in the Review Staff pending notification by the Appeals tax shelter representative that the Director, Appeals Division, has designated the tax shelter as an appeals coordinated issue.

.03 After designation of the key case as an Appeal coordinated issue, the Chief, Examination Division in the key district and the servicing Chief, Appeals Office will decide whether 30–day letters will be issued to all or a representative number of taxpayers in that district. (This decision cannot be designated below Chief, Review Staff.) At the same time that 30-day letters are issued to in-district taxpayers, Form 918–B will be issued to the related districts with a copy of the examiner's report on the key entity and the following statement attached:

> This case (key taxpayer's name) has been identified as a tax shelter Appeals coordinated issue case. We have issued regular 30–day letters (to all our taxpayers or to a representative number of our taxpayers).

.04 Upon receipt of Form 918–B by the related district, the Chief, Examination Division and the servicing Chief, Appeals Office will decide whether the 30–day letters will be issued to all or a representative number of taxpayers in that district. (This decision cannot be designated below Chief, Review Staff.) If 30–day letters are to be issued to all taxpayers, they will be contacted and offered the opportunity to agree. If a taxpayer does not agree, the case will be closed to Review Staff. Form 3198 will be attached to the outside case file marked "Related to a tax shelter Appeals coordinated issue case." Review Staff will immediately issue the regular 30–day letters.

.05 If Examination and Appeals determine that regular 30–day letters will be issued to only a representative number of taxpayers in that district, the remaining cases will be held in suspense. However, before these cases are placed in suspense, each taxpayer will be contacted and offered the opportunity to agree. The taxpayer will be advised that unless an agreement is reached, the case will be held in suspense pending resolution of the representative cases.

.06 The taxpayers, whose cases are in suspense, will be offered an opportunity to comment on the issue with the key Appeals Office. Examination will forward the comments to the key Appeals Office and inform the taxpayer that the input will be considered by Appeals.

.07 If Examination and Appeals determine that regular 30–day letters will be issued to all taxpayers in that district, the issuance of the 30–day letters will be scheduled so as to distribute the workload to allow for an orderly movement of cases to and through Appeals. In those instances where the number of cases is such that it would create an undue workload burden, the Chief, Examination Division and Chief, Appeals Office will decide how to systematically process the cases to minimize any workload problems.

.08 If Examination and Appeals cannot agree on the issuance of 30–day letters, the dispute will be resolved by the Regional Director of Appeals and the Assistant Regional Commissioner (Examination).

Section 8. Tax Shelter Appeals Coordinated Issue Cases—Appeals

.01 Normal settlement procedures and guidelines will be applied with due consideration given Policy Statements P–8–1 and P–8–47. The purpose of identifying cases as Appeals Coordinated Issue Cases is to ensure that once an acceptable basis of settlement has been determined for the key entity, the same basis of settlement will be offered to each investor in the entity who desires settlement.

.02 Since this approach can be successful only with a cooperative effort between Counsel and Appeals, the proposed settlements may be coordinated with Counsel. Such cases will be identified as ones which require the views of Appeals before an offer in settlement is accepted by Counsel, Sec. 3.09, Rev. Proc. 79-59.

.03 Upon closing of the case, whether agreed or unagreed, Appeals will initiate Form 918-A, Part 2, attaching a copy of the Appeals supporting statement which clearly identifies the acceptable basis of settlement of the shelter issue. Where appropriate, a specific matter closing agreement should be secured to impart finality to the issue.

.04 Upon receipt of the case in the related Appeals Office, the Appeals officer should confer with the Appeals coordinating official for guidance as to handling of the related case. Appeals will offer conference within normal guidelines (45-90 days). The procedures set forth in MS 8G-27 formerly MS 8(24)G-166 and Rev. Proc. 79-34 will be applicable to the shelter issue.

Section 9. Investors in Multiple Tax Shelters or Cases With Other Substantive issues

.01 If a district (key or related) has an investor in an identified litigating vehicle *or* tax shelter Appeals coordinated issue case and that investor is also in another shelter which is under examination, the District Tax Shelter Coordinator in the other tax shelter key district will be contacted for permission to issue either the special or regular 30-day letter.

.02 If permission to issue the 30-day letter is granted, the loss from the other shelter will be disallowed in the 30-day letter. When results from the examination of the other shelter are received, they will be forwarded for association with the investor's case file.

.03 If permission to issue a 30-day letter is not granted, the investor's case will be held pending completion of the examination of the other shelter or until further instructions are received from the District Tax Shelter Coordinator in the other tax shelter key district. Any disagreements between districts will be resolved by the respective Assistant Regional Commissioners (Examination).

.04 If the district (key or related) has an investor in an identified litigating vehicle *and* also in a tax shelter Appeals coordinated issue case, the special 30-day letter will be issued.

.05 In either "Litigating Vehicle" or Appeals Coordinated Issue cases, if the district (key or related) has an investor's return under examination with complex or substantive issues independent of the tax shelter(s) issue, the issues unrelated to the tax shelter issue(s) should be developed and discussed with the taxpayer. If these independent issues are unresolved by the district Examination Division, a regular 30-day letter will be issued, and Appeals Division will consider the protested issues unrelated to the tax shelter issues before applying the provisions of this document to the tax shelter issue(s).

Section 10. Appeals Reporting Procedures

.01 Each region will submit an initial inventory report of all docketed and nondocketed tax shelter returns to the Director, Appeals Division, CP:AP, within 15 calendar days from the date of this supplement. The report will include the information in 4.07 above. Also, identify as key or related case.

.02 Specific instructions concerning quarterly reports, beginning with the quarter ended December 31, 1979, will be issued at a later date.

.03 When a new type of abusive tax shelter promotion is identified by an Appeals Office which has not been previously encountered in the region and which is not covered by a litigating position, it should be brought to the attention of the designated Counsel tax shelter representative for purposes of a report to the Director, Tax Litigation Division.

Section 11. Supply of Forms

Reproductible copies of Letter 1389 (DO) are being provided to all Regional Offices. Requirements for the letter should be ordered from Regional Facilities Management.

Section 12. Effect on Other Documents

This supplements IRM 4220, 4240, 4410, 4430, 4440, and 8(24)00.

/s/ S. B. Wolfe
Assistant Commissioner (Compliance)

TAX PRACTITIONERS NEWSLETTER

Anchorage District

July 1979 Issue No. 79-3

Dear Practitioner:

Recently, there has been a number of "tax advisors" promoting various "tax savings" schemes purporting to drastically reduce or eliminate Federal income taxes. I'm sure you have probably been contacted by at least one client who has heard about these schemes and sought out your advice as to their applicability to his or her financial situation.

Two areas in particular - "family estate trusts" and "foreign trust organizations" - are being widely promoted as legitimate tax savings schemes. A close look at both reveals that they are, in fact, sham transactions.

As a result of my concern in these two areas, technical personnel in the Seattle District carefully researched the facts surrounding typical examples of these trust schemes and have prepared the attached information paper. It is being made available to you so that you may know how the Anchorage and Seattle Districts view these transactions. You may also want to let clients wishing to establish such a trust program read the information and familiarize themselves with the pitfalls involved.

Should you wish additional copies of this information paper, please feel free to reproduce it in any quantity desired. Copies, in limited quantities, are also available by writing to Public Affairs Office, Internal Revenue Service, P.O. Box 1500, Anchorage, AK 99510. Unfortunately, we are unable to accept telephone orders for additional copies.

I certainly hope the attached material is helpful to you in dealing with situations where such transactions are requested by clients. In advance, thanks for your help in furthering our mutual goal of fair and impartial tax administration.

Sincerely yours,

P. R. Berria
District Directo

AN INFORMATION PAPER ON "FAMILY ESTATE TRUSTS"
AND "FOREIGN TRUST ORGANIZATIONS"

Prepared by Seattle District, Internal Revenue Service

There are currently two prevalent situations in the Anchorage and Seattle Districts where trusts are being utilized in an attempt to avoid Federal income taxes. Taxpayers and practitioners in these Districts should be aware of the typical trust plan used in both situations, the I. R. S. position for both, and applicable law in order to make an informed evaluation of the wisdom of investing time and money in the plan.

FAMILY ESTATE TRUSTS

BACKGROUND

Taxpayers and preparers are cautioned to be wary of certain trust plans called "family estate trusts", "pure trusts", "educational trusts" or "equity trusts". These trusts, in truth, typically result in adverse tax consequences when they are set up.

These trusts are now being promoted through Alaska and Washington as a "legitimate tax loophole" among purchasers who generally are not sophisticated in Federal tax law. The tax benefits allegedly gained from setting up such trusts have been grossly and improperly misstated by some promoters and have no legal justification.

EXAMPLE

The individual is advised to assign his or her assets and his or her income from current employment to the trust. The promoters then advise that the creator of the trust be appointed as "manager" of the trust assets. As "manager," the creator receives compensation as well as certain "fringe benefits," such as "pension rights", "tax-free use of a residence," and "educational endowments" for children.

According to the promoters, once the creator's income is shifted to the trust, the trust is supposedly taxed only on undistributed net income. Generally, substantially all living expenses of the grantor and his or her family have been deducted on the trust's fiduciary income tax return, Form 1041, as alleged business expenses of the trust, with the balance sometimes being distributed to the creator's family or to a separate "non-profit" educational trust leaving little or no taxable income to be reported.

FACTUAL EVALUATION

Several adverse I.R.S. rulings have been published on these schemes. These rulings are Rev. Rul. 75-257, 1975-2 C.B. 251; Rev. Rul. 75-259, 1975-2 C.B. 361; and Rev. Rul. 75-260, 1975-2 C.B. 376.

LEGAL EVALUATION

In addition, I.R.S. challenges to these trusts have been upheld in various court cases. The United States Tax Court has repeatedly rejected the taxpayer's arguments that assigning all compensation for services of the creator to a family trust relieved the taxpayers of the responsibility of reporting such income on their individual income tax returns. The Tax Court has also repeatedly held that income reported by the trust which results from sources other than compensation for the taxpayer's services is taxable to the taxpayer under the grantor trust provision (Sec. 671-678) of the Internal Revenue code. In addition, the Tax Court has held that the fee paid to the promoters for these trust instructions and forms is not deductible by the taxpayer.

The cases which have upheld the I.R.S. challenges to the trusts are as follows:

1. Horvat v. Commissioner, 36 T.C.M. 476 (1977), aff'g by 7th Circuit in an unpublished opinion 6-7-78, cert. denied _______ U.S.________ (3-19-79), rehearing denied, _______U.S._______(5-14-79)
2. Vruk v. Commissioner, CCH T.C. Memo. 1979-164, (4-25-79).
3. Morgan v. Commissioner, 37 T.C.M. 1661 (1978).
4. Johnson v. Commissioner, 37 T.C.M. 544 (1978).
5. Wesenberg v. Commissioner, 69 T.C. 1005 (1978).
6. Nelis v. Commissioner, PH T.C. Memo. Par. 79,042 (1979).
7. Damm V. Commissioner, 36 T.C.M. 793 (1977).

DISTRICT POSITION

Anyone approached about establishing trusts for the purposes of avoiding taxes should get advice from professional counselors who are familiar with the tax law. The I.R.S. intends to continue vigorous enforcement action against taxpayers who use such sham devices to understate their tax liability as well as the promoters of such schemes.

Taxpayers should be warned that they are responsible for the accuracy of their returns even if they engage a return preparer. A penalty of 5 percent of the additional tax due can be assessed against the taxpayers for negligent or intentional disregard of tax rules and regulations. A penalty of 50 percent of the additional tax can be assessed against the taxpayer for willful attempts to understate tax liability.

Preparers should be aware that penalties of up to $100 may be assessed against the preparer for each return exhibiting negligent or intentional disregard of tax rules and regulations and up to $500 for willful attempts to understate tax liability.

FOREIGN TRUST ORGANIZATIONS

BACKGROUND

The Anchorage and Seattle Districts are currently preparing to audit significant numbers of tax returns where individuals have sought to eliminate their income taxes by creating and utilizing entities called "foreign trust organizations". The instructions on how to establish and operate these entities are sold by promoters for fees of up to fifteen thousand dollars. The typical circumstances of cases where taxpayers have attempted to use these trusts to avoid taxes are illustrated in the following examples.

Example #1

The taxpayer attends a two-day seminar where he is provided with lectures and instructional materials relating to the use of foreign "pure trust organizations" to avoid taxes. After this session, the taxpayer authorizes a representative of the promoters to travel to Central America and to pay a small fee to a Central American citizen to sign formal documents purporting to establish a series of foreign trusts.

The Central American citizen, who is described by the promoters as an individual having no information whatsoever about the documents which he is asked to sign, is designated as the "creator" in documents labeled "Contract and Declaration of Trust". These documents allegedly create three foreign trust entities, which purport to be governed by the laws of a Central American country.

The taxpayer then signs additional documents stating that nominal sums of money have been transferred to two of the trusts in exchange for "Trust Certificates" or "Certificates of Beneficial Interest" issued to the taxpayer. The taxpayer also signs documents stating that the taxpayer's real and personal properties including his business equipment have been transferred to one of the foreign trusts in exchange for Trust Certificates. The taxpayer is named the trustee of one of the foreign trusts, and that foreign trust (for convenience, called trust #1) is in turn named as the trustee of each of the other foreign trusts.

After all these documents are signed, the taxpayer attempts to eliminate all or a substantial portion of his own taxable income. He does so by purporting to enter into transactions with one of the three trusts.

For example, during the first year of the plan, the taxpayer signs documents stating that the taxpayer has assigned his rights to the instructional materials he received from the promoters of the plan to one of the foreign trusts in exchange for the certificates. At the same time, the taxpayer purports to "negotiate" with that trust (for convenience, this trust is numbered trust #2) to "purchase" the materials back from trust #2 for a stated sum of $50,000. The taxpayer then claims a $50,000 deduction with respect to this transaction on his own individual income tax return.

Trust #2, to which the $50,000 is paid, files a non-resident alien tax return reporting the $50,000 from the taxpayer as income. However, the taxpayer also causes trust #2 either to make a "distribution" to, or enter into another transaction with one of his other foreign trusts (trust #3). This "distribution" or transaction allegedly gives rise to a $50,000 deduction for the non-resident alien trust #2 which it claims on its tax return. Thus, trust #2 reports no taxable income.

Trust #3 which received the $50,000 allegedly paid or distributed (and deducted) by trust #2 does not file a Federal income tax return. Trust #3 claims that it conducts no business in the United States and thus is not required to file a return.

Finally, as part of this overall plan, the taxpayer arranges to have the $50,000 which is now in foreign trust #3 either "loaned" or "gifted" back to himself.

Example #2

Taxpayers have been advised by the promoters that they can eliminate their taxable income in later years in a similar manner by setting up transactions such as the following:

(A) The normal supplies used in taxpayer's business are purchased in the name of trust #2 for Five Hundred X Dollars, the price at which the taxpayer would normally purchase them. The taxpayer then "purchases" the supplies from that trust for Two Thousand X Dollars, and claims a deduction of Two Thousand X Dollars for supplies on his income tax return.

(B) Trust #2 "hires" each of taxpayer's business employees at his/her normal salary of Two Hundred X Dollars, and taxpayer in turn "subcontracts" for each employee's services from trust #2 and pays trust #2 Five Thousand X Dollars for those services. Taxpayer then claims the Five Thousand X Dollars purportedly paid for services as a deduction on his own return. The difference between the Five Thousand X Dollars paid to trust #2 by taxpayer and the Two Hundred X Dollars paid to the employee by the trust is later used by trust #2 for taxpayer's benefit or loaned or gifted back to the taxpayer.

(C) Taxpayer had transferred his business equipment to trust #2 in exchange for Trust Certificates. Now he "leases" this equipment back from the trust for a sum substantially greater than that which would be arrived at between a lessor and lessee dealing at arm's length.

(D) One of the foreign trusts performs "management services" for which the taxpayer pays the trust substantial amounts. These management services are often nothing more than paper transactions. No actual services are performed.

The taxpayers are advised by the promoters that by the use of these and similar transactions, they can claim as much in deductions on their tax returns as is necessary to eliminate their taxable income. The taxpayers are advised that the foreign trusts which directly deal with the taxpayer "conduct business" in the United States. Thus they are required to file non-resident alien tax returns reporting as gross income the sums allegedly paid to them by the taxpayer. But these trusts can in turn enter into transactions with one or more of the other foreign trusts which do not deal directly with the taxpayer. These transactions are structured so as to allow the trust filing a non-resident alien return to claim purported deductions on its return. Thus, it too ends up with little or no taxable income reported on its return.

The trusts which do not deal directly with the taxpayers do not file U. S. income tax returns because they claim they are not conducting business in the U. S. Thus they do not report taxable income or pay income tax in the U. S.

FACTUAL EVALUATION

The mere recitation of the facts of these cases shows clearly the fraudulent nature of the transactions involved. However, the principles of trust and foreign tax law upon which the promoters rely appear sophisticated to the unsuspecting taxpayer.

It is the position of the District Director that the transactions utilized by these taxpayers in an effort to shift their income to a nontaxable foreign entity violate very fundamental principles of the tax laws.

LEGAL EVALUATION

The courts have long recognized and applied the general principle that the substance, not the form, of the transaction controls the tax consequences. See, e.g. *Gregory v. Helvering*, 293 U.S. 465 (1935).

The promoters of the schemes described above seek to convince taxpayers that neither the courts nor the Internal Revenue Service can look beyond the formal documentation of a transaction, or a series of transactions, in deciding tax consequences. In support of this proposition, the promoters rely upon Federal court cases stating that taxpayers may validly plan their affairs so as to minimize their taxes.

However, the promoters neglect to point out cases such as *Lazarus v. Commissioner*, 58 T.C. 854 (1972), *aff'd* 513 F. 2d 824 (9th Cir. 1975). In that case, the taxpayers claimed they "sold" stock to a foreign trust and that the trust independently sold the same stock to a third-party.

The taxpayers relied upon the formal documentation of the transactions to support their contentions. The United States Tax Court found that the transactions were in substance part of a prearranged plan to use the trust as a mere conduit for the sale of the stock to the third-party and that taxpayers themselves reserved the right to the income derived from the sale.

While agreeing with the general proposition that taxpayers are entitled to adopt a plan which will decrease the amount of taxes they would otherwise owe, or which will even avoid the taxes altogether, the Tax Court made the following observation:

> "In laying the facts of petitioner's case along side the controlling statutory provisions, we are reminded that the substance of a transaction rather than the form in which it is cast is determinative of the tax consequences unless it also appears from an examination of the statute that the form is to govern. See e.g., *Commissioner v. P. G. Lake, Inc.*, 56 U.S. 260, 266-267 (1958). This principle is peculiarly applicable to annuities and trusts because they are easily susceptible of manipulation so as to create allusion. C.F., e.g. *Kanetsch v. United States*, 364 U.S. 361 365-366 (1960); *Helvering v. Clifford*, 309 U.S. 331, 335 (1940); *Jack E. Golsen*, 54 T.C. 742, 754 (1970), *aff'd* 445 F. 2d 985 (C.A. 10, 1971). 'Technical considerations, niceties of the law of trust or conveyances, or the legal paraphernalia which inventive genius may construct' must not frustrate an examination of the facts in light of the economic realities. *Helvering v. Clifford*, *supra*, at 344. Moreover, in ascertaining such realities, a series of related transactions may not be broken into bits and pieces but must be viewed as a whole. *Minnesota Tea Co. v. Helvering*, 302 U.S. 609, 613 (1938); *Kanawha Gas and Utilities Co. v. Commissioner*, 214 F. 2d 685, 691 (C.A. 5 1954)."

Where a series of transactions, taken as a whole, show either that the transactions themselves are shams, or that the transactions have no "substance, utility, or purpose" apart from tax considerations, the courts will refuse to allow the sought after tax benefits of these transactions. See Goldstein v. Commissioner, 364 F. 2d 734 (2nd Cir. 1966); Goodstein v. Commissioner, 267 F. 2d 127 (1st Cir. 1959); Knetsch v. United States, 364 U.S. 361 (1960).

DISTRICT POSITION

The application of these legal principles to cases with factual patterns similar to those described above will result in the complete disallowance of the tax savings claimed by the promoters.

Specifically, the alleged transfer of the promoters' instructional materials to one of the foreign trusts under a prearranged plan to have the taxpayer "purchase" the materials for a substantially increased price involves no economic substance and is conceived only for tax purposes.

This conclusion is even more evident in view of the fact that the prearranged transactions include the ultimate return of the "purchase price" to the taxpayer through the conduit of one or more foreign trusts. Likewise, taxpayers' alleged "purchase" or "lease" of supplies and/or services from the foreign trusts are transactions that obviously would not be entered into for any reason other than taxpayer's attempt to manufacture tax deductions.

Finally, in some cases, it appears that "management and consulting services" alleged to have been rendered by the foreign trust to the taxpayer are nothing more than paper transactions. They are not supported by actual services rendered for an arm's-length price.

Several of the promoters of these arrangements have instructed taxpayers as to methods they should utilize to prevent Revenue Agents from ascertaining the full facts and circumstances of the transactions reflected on the tax returns when those returns are selected for examination. Taxpayers should be reminded that when they refuse to provide complete substantiation and documentation of claimed deductions, expenses and losses, the Director has the authority to issue a deficiency notice disallowing these deductions in full.

Furthermore, Section 7602 empowers the Internal Revenue Service, during the audit of a case, to issue administrative summonses requiring production of documents and the taking of testimony from taxpayers and third parties concerning transactions reflected on a return.

When a deficiency notice is issued disallowing deductions, the taxpayer either must pay the tax deficiency shown on the notice or file a petition in the United States Tax Court. If a Tax Court petition is filed, the taxpayer has the burden of proving to the Court that the deductions and losses claimed are legitimate.

At the trial of the case, the taxpayer is subject to cross-examination by government counsel concerning the full details of the transactions involved and all relevant documents are subject to subpoena at trial and/or discovery prior to trial.

The Code provides for a penalty of five percent of the understatement where an understatement of tax is due to intentional disregard of the rules and regulations, and a penalty of 50 percent of the tax understated where the understatement is due to fraud. Where appropriate, penalties of up to $100 may be assessed against the preparer for each return exhibiting negligent or intentional disregard of tax rules and regulations and up to $500 for willful attempts to understate tax liability.

As a final matter, the substantial fees paid to the promoters of these arrangements are not deductible by the taxpayers. See Morgan v. Commissioner, 37 T.C.M. 1661 (1978) and Johnston v. Commissioner, 37 T.C.M. 544 (1978) where the Tax Court denied the taxpayers' claimed deductions for fees paid to promoters of the so-called "family estate trusts" which involve transactions with trust entities similar to those described in this information paper.

We are committed to thwart the tax avoidance/evasion schemes (or variations thereof) described in this Information Paper as actively as possible with all the tools at our disposal.

BIGLER, HAWKINS & OBENDORF
CERTIFIED PUBLIC ACCOUNTANTS
3709 SPENARD RD.
ANCHORAGE, ALASKA 99503

907 276-3483

March 19, 1980

Mr. and Mrs. Rudi Kaeppele
1016 W. 22nd
Anchorage, Alaska 99503

Dear Rudi and Verena:

We have decided that our firm will not be able to prepare your 1979 income tax returns. After a review of the information you provided us and discussion among the partners, we feel there is a significant number of transactions which we do not understand and which we feel have potential tax implications that are beyond the area we wish to be involved. It is very apparent that there are several trusts of which we have no knowledge, and the trusts of which we do have knowledge seem to have information which does not coincide to previous information we have available. It is also apparent that gift tax returns need to be filed on gifts to these trusts and, in all likelihood, contain a potential for problems which we feel would be beyond the scope of the work we could perform for you.

In our discussion on Monday, it was noted that we are currently handling several other clients which have trust organizations. Most trusts have a tremendous ability to do estate planning and income tax planning, however, when coupled in conjunction with foreign based trusts or other entities which are not within the pattern that we normally expect, then the potential for IRS involvement and our own personal liability becomes substantially greater. These individuals you mentioned that are currently being handled by our firm are in every instance having their trusts terminated and reverting to the use of only the domestic trusts and doing tax planning within the confines of the laws as we currently understand them. We feel that the determination by yourselves to continue the use of foreign trusts would not be in our best interest as a firm. We would be happy to discuss this matter further in the event you decide that the trusts do not live up to your expectations and you wish to cease using them. However, as long as the foreign based trusts are affecting your income reporting, then our firm is not interested in being involved in preparation of any returns.

We are returning to you all information you have provided to us for the preparation of your 1979 tax return, and if you have any questions, please contact us at your convenience.

Very truly yours,

Jay A Ofsthun

Jay A. Ofsthun
Partner

The Land Market

May 14, 1981

Glen Huff
Box 2240
Wasilla, Alaska 99687

Dear Mr. Huff,

Thank you for your letter of April 27 concerning Lot 15 Block 9 Glacier View Subdivision #2 here in Homer.

We have done a little research on the property and have the following facts to report to you.

In April we sold two lots one block away from your lot. These lots each went for $9,500. However, they were sold for a very small down and very small monthly payments. The terms in this particular sale made the property worth a higher value.

We have another listing in the same subdivision for $8,500 cash. So you can see the terms are very important. We were able to sell the two lots with only $1,500 down in a very short marketing period. The lot that we have for sale for $8,500 cash have been on the market for over 60 days and we have not been able to market it.

In your letter you indicated that you wanted to sell your property for cash. I am only giving you this information above so that you know that the price would not be as high for cash and the possibility of selling it is not as good as if it were on a terms sale.

I would recommend the price for your property to be approximately $8,500 cash or $9,500 with appropriate terms. We would be most happy to handle the sale for you and feel we would be able to market it over the summer season. We have been very successful this year and have broke all records compared to past years.

In the hopes that you would consider listing with us, I have enclosed two listing agreements. The first listing agreement is for $9,500 with terms that I feel are marketable and appropriate. The second listing agreement is for $8,500 cash per your letter of request.

Please review both listings and if you feel that you would be comfortable listing the property with us, sign the appropriate listing and return to our office as soon as possible. We will be anxious to hear from you in the very near future.

Very truly yours,

Rita Jo Shoultz, CCIM
Broker

P.S.
When our preliminary research was completed we discovered a problem concerning title. For your information we will pass on the quote from the title company-Kachemak Bay Title;

> We cannot insure property which comes from these business trusts! They are considered by the IRS to be illegal and therefore the title companies will not insure.

Please advise if you wish us to do anything further. I understand the remedy to this situation is a quit claim deed from Baker Company to yourself. Again, please advise if we can be of further service.

KACHEMAK BAY TITLE AGENCY, INC.
BOX 117
HOMER, ALASKA 99603
PHONE (907) 235-8197

June 12, 1981

Rita Jo Shoultz
The Land Market
Box 311
Homer, Alaska 99603

RE: Business Trusts

Dear Rita:

In response to your request regarding our company policy insuring property which is vested thru a Business Trust, it is our company policy not to insure these trusts or one vested thru.

These trusts are not recognized by the Internal Revenue Service and therefore, we cannot recognize them as a legal entity. In order to acquire or sell property, there must be a legal entity, such as a individual, corporation, partnership.

We hope that this will help in your understanding of the problems which a business trust could create.

Sincerely,

BILL BUTLER
Title Officer and
Manager

BB:ma

KACHEMAK BAY TITLE AGENCY, INC.
DRAWER 117, HOMER, ALASKA 99603 PHONE (907) 235-8196
agent for PIONEER NATIONAL TITLE INSURANCE COMPANY
A TICOR COMPANY

Preliminary Commitment for Title Insurance

To: Nicholas Gangl
Aerie, Inc.
P. O. Box 1408
Homer, Alaska 99603

No. B-3730-E

Date: July 8, 1981 at 8:00 a.m.

A consolidated statement of all charges and advances in connection with this order will be provided at closing.

☒ Owner's standard coverage
☐ Mortgagee's standard coverage
☐ Mortgagee's ALTA coverage

Amount $8,300.00 Premium $150.00

Pioneer National Title Insurance Company agrees to issue on request and on recording of any appropriate documents, its policy or policies as applied for, with coverages as indicated, based on this preliminary commitment that title to the property described herein is vested on the date shown above in

BAKER COMPANY, a Trust Organization, an estate in fee simple.

subject only to the exception shown herein and to the terms, conditions and exceptions contained in the policy form.

This report and commitment shall have no force or effect except as a basis for the coverage specified herein.

By Mary Ann Rowe
MARY ANN ROWE
TITLE EXAMINER

DESCRIPTION:

Lot Fifteen (15), Block Nine (9), GLACIER VIEW SUBDIVISION NO. 2, according to Plat No. 74-847, in the Homer Recording District, Third Judicial District, State of Alaska.

SUBJECT TO:

1. Easement for electric transmission or distribution line or system and/or telephone lines across said premises, together with the right to enter said premises to make repairs and the right to cut shrubbery and trees which constitute a menace to said lines and/or systems located on said premises:
   Recorded : January 26, 1963
   Volume/Page : 68/162
   Granted to : Homer Electric Association, Inc.
   Affects : General easement, no definite location disclosed.

2. An easement affecting a portion of said premises and for the purposes herein stated, and incidental purposes, delineated on the face of, or dedicated by, the noted plat:
   Plat No. : 74-847
   For : Utilities
   Affects : North 10 feet

3. Building set-back lines as delineated on the face of the plat, the South 20 feet.

TITLE TO VEST IN: NICHOLAS GANGL

NOTE: The necessity of providing this office prior to closing, copies of trust agreements establishing ABLE Company, a Trust Organization, and BAKER Company, a Trust Organization, and proof that said trusts qualify as legal entities.

NOTE: Kenai Peninsula Borough Parcel No. 177-102-1600, 1981, $103.77 PIF.

~~NOTE: Investigation should be made to determine if there are any service, installation, maintenance, or construction charges for sewer, water or~~ electricity.

MA:ash
7/29-81

June 28, 1978

Ms. Diane Elm - Internal Revenue Agent
P.O. Box 1500
Anchorage, Alaska 99501

Dear Ms. Elm:

Your letter requesting an examination of unspecified records and/or documents for unknown reasons concerning the year 1976 may be premature. The Privacy Act of 1974, Freedom of Information Act of 1966 and numerous court decisions i.e., U. S. v. Powell 329 U.S. 48, Pacific Mills v. Kenefick 99 F 2d 188, Oklahoma Press Publishing Co. v. Walling 327 U.S.217, Sherar v. Cullen 481 F 2d 945 and others require that the Internal Revenue Service first inform the taxpayer in writing of certain information when requested. My request are as follows for each year listed to be answered separately.

1. Please state the authority (specific section of the I R Code) for the solicitation of the information you desire.
2. Please state whether disclosure of such information is mandatory or voluntary. If mandatory, what penalties will result for non-compliance?
3. Please state the principal and specific purpose or purposes for which the information is to be used in any capacity.
4. Please state the routine uses which may be made of the information or any other use of the information.
5. Please state the effects on the taxpayer if not provided the information requested.
6. Please explain and show that the investigation is of the kind authorized by Federal Statute.
7. Please explain why and how the demand for information is not too vague and broad in scope.
8. Please explain and show that information sought is relevant or material to a lawful subject of inquiry.
9. Please explain how and why the investigation is pursuant to a legitimate purpose.
10. Please explain how and why the inquiry for information may be relevant to the purpose.
11. Please show how and prove that the information is not already in your possession or cannot be obtained from other sources.
12. Please show and prove that the Secretary or his delegate has determined that the further examination is necessary.
13. Please show and prove that the other administrative steps required by the I R Code have been followed to the letter of the law.
14. Please show and prove that after initial investigation, the Secretary or his delegate has determined that further examination is necessary and warranted.

15. Please show and prove that the taxpayer has been properly notified that further examination is necessary.
16. Please state the exact reason or reasons for the examination of each year requested in detail.
17. Please state whether there is a misconception and/or mistake on the tax return for each year.
18. Please specify exactly wherein the mistake lies, or if in fact one exists.
19. Please specify exactly which item of income or expense is in question on the tax return, if any.
20. Please state why this specific income or expense is in question or is being examined.
21. Please explain why and what issue in law or in fact is questioned, if any.
22. Please state the name, address and phone number of any person or persons informing you of any question or concern involved in any item on any tax return or any activity of the taxpayer.
23. Please state exactly what was said, either verbal or written, concerning any item, tax return or activity of the taxpayer by any person or persons in #22 informing or directing you to conduct an examination directly or indirectly.
24. Please state and prove that taxpayer is not being subjected to an examination based on or for any political, ideological, harassment, pressure tactic or bad faith purpose, and is not being singled out for prosecution as an example to other taxpayers for any reason.
25. Please state and explain why the examination cannot and will not amount to an inquisition or arbitrary inquiry on the part of the tax examiner.
26. Please state and explain why I R Code Section 7605(b) does not apply to any examination of taxpayer where "No taxpayer shall be subjected to unnecessary examination or investigations,...."
27. Please state the exact methods used either past or present to gather information concerning taxpayer and whether information was gathered through the use of surveillance, phone-tapping, mail coverage, interviews, illegal entry, informers, spy or other.
28. Please state whether verification of secific deductions would be the limited scope of the examination.
29. Please state and explain any objections to the use of electronic recorders during the examination.

If there is anything you feel not compelled to answer, please cite legal basis for not answering each individual question. As soon as you respond to this letter, I will be happy to schedule an appointment.

Sincerely,

Richard S Paul

Richard S. Pauli, D.D.S.

Department of the Treasury
Internal Revenue Service

Privacy Act Notice

Pub. 876 (Rev. 1-79)

The Privacy Act of 1974 says that each Federal agency that asks you for information must tell you the following:

a. Its legal right to ask for the information and whether the law says you must give it.

b. What major purposes the agency has in asking for it, and how it will be used.

c. What could happen if the agency does not receive it.

For the Internal Revenue Service, the law covers:

- .ax returns and any papers filed with nem.
- Any questions we need to ask you so we can—
  - Complete, correct, or process your return.
  - Figure your tax.
  - Collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers.

You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the U.S.

If a return is not filed, or if we don't receive the information we ask for, the law provides that a penalty may be charged. And we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information.

If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

This is the only notice we must give you to explain the Privacy Act. However, we may give you other notices if we have to examine your return or collect any tax, interest, or penalties.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1979 690-383

Internal Revenue Service Department of the Treasury

District
Director

P.O. Box 1500, Anchorage, Alaska 99501

July 19, 1978

Richard S. Pauli, D.D.S.
3051 Lakeside Drive
Anchorage, Alaska 99502

Dear Dr. Pauli:

Your letter dated June 28, 1978 has been given to me for reply.

The right of the Internal Revenue Service to examine your books and records is specified in Code Section 7602 of the Internal Revenue Code and is not subject to any preconditions which you have imposed.

If you have any further questions, please let me know.

Respectfully,

Henry R. Viciedo

Henry R. Viciedo
Disclosure Officer

June 28, 1978

Director, Anchorage District Office
Internal Revenue Service
P.O. Box 1500
Anchorage, Alaska 99510

Attn: Disclosure Officer
Freedom of Information Request

Dear Sir:

This request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552 and/or regulations thereunder. The undersigned taxpayer request copies of records contained in your files of various types concerning my own personal and business entity income tax affairs of any nature for the following years: 1972, 1973, 1974, 1975, 1976, 1977, 1978. for LaTouche This request for records includes, but is not limited to, all notes, memos, forms, reports, instruments, documents, work papers, data, computations, considerations, evidence, transcripts, statistics, information, findings, figures, letters, income tax returns and attachments.

Enclosed and within this request is a submission of my signature, address and a photo copy of my driver's license or other identification bearing my signature. Also included is a notarized statement for corporation, partnership or other entity records. LaTouche

Please send any notification and/or copies of requested records to my address which is: 3051 Lakeside Drive, Anchorage, Alaska, Zip 99502. (office add.
35

Further, it is requested that a copy of all records in my files be furnished without inspecting them; reasonable copying costs and postage will be paid by me upon receipt of records or immediatelyadvise me of the costs and time to receive records involved and a payment may be returned to you.

This request for copies of records and any other information conforms to your agency's procedures and you will promptly make such copies of records available. If you fail to do so, a complaint may be filed in Federal District Court asking for punishment of the responsible persons involved for contempt.

Sincerely,

Felicia C Pauli

Attachments:

August 9, 1978

Internal Revenue Service
P.O. Box 1500
Anchorage, Alaska 99501

Attn: Mr. Henry R. Viciendo, Disclosure Officer

Dear Mr. Viciendo:

I am in receipt of your letter dated July 19, 1978, pertaining to requests made under the Freedom of Information Act.

Enclosed please find as requested:

1. A noterized statement for the signature of Richard S. Pauli.
2. Signed copies of the front pages of the latest tax returns of the two below mentioned entities.

I am also requesting records on the following:

1. Richard S. Pauli, D.D.S., A Professional Corporation
   EIN 92-0041984
   For years requested in letter dated June 28, 1978
2. LaTouche Professional Associates
   EIN 92-6011669
   For years 1976, 1977 and 1978

Copies of stock certificates are not available.

Whatever the usual and customary charge is for copies is acceptable to me. Thank you for your cooperation and I will be awaiting your reply.

Sincerely,

Richard S Paul

Richard S. Pauli

Internal Revenue Service Department of the Treasury

District
Director

P.O. Box 1500, Anchorage, Alaska 99501

August 22, 1978

Richard S. Pauli, D.D.S.
3051 Lakeside Drive
Anchorage, Alaska 99502

Dear Dr. Pauli:

I am in receipt of your letter dated August 9, 1978 in which you specify the entities referred to in your earlier request for information under the Freedom of Information Act. A review of our local records indicate that we have only the 1976 return for LaTouche Professional Associates in this District. I am requesting the 1972 through 1977 returns of Richard S. Pauli, D.D.S., a Professional Corporation and the 1977 return of LaTouche Professional Associates, a partnership, from our Ogden Service Center. I cannot request the 1978 returns you specify because they would not be filed yet.

Since you have requested information on returns on which the statute of limithtions has expired it will take approximately four to six weeks to secure the information. Upon receiving the information your request will be processed.

Respectfully,

Darwyn L Pearl

Darwyn L. Pearl
Acting Disclosure Officer

Internal Revenue Service Department of the Treasury

District
Director

P.O. Box 1500, Anchorage, Alaska 99501

May 16, 1979

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502

Dear Mr. Pauli:

Revenue Agent Bruce Kinney just brought to my attention a Freedom of Information Act request which you submitted in June 1978 and to which we have not adequately responded.

I apologize for the lengthy delay in responding to your request. It was caused by some confusion during the change over in Disclosure Officers but the problem has now been rectified and delays of this type will not happen in the future.

In response to your request I am enclosing copies of all documents in our files concerning you and/or your corporation to which you may have access. If you wish to access any files other than those we are maintaining they would be under the control of the Ogden Service Center. You can access them by sending a Freedom of Information Act request to the following:

Director
Ogden Service Center
Attn: Disclosure Officer
1160 W. 1200 South Street
Ogden, Utah 84201

One document, Form 4789 - Transaction Report, is excluded from release to you under Exemption (b)(7)(E) of the Freedom of Information Act. I am enclosing Notice 393 which explains this exemption and contains information concerning your appeal rights under the Act.

Our billing invoice (Form 5423) totaling $15.80 is also enclosed.

Sincerely,

Charles E. Dietz
Disclosure Officer

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502
June 4, 1979

Freedom of Information Appeal
Comissioner of Internal Revenue
Ben Franklin Station
Post Office Box 929
Washington, D.C. 20044

Gemtlemen:

I am appealing the denial of disclosure of one document, Form 4789, Transaction Report, under my Freedom of Informatiom request dated June 28, 1978. The date of the letter denying this request is May 19, 1979.

Thank you,

Richard S Pauli

Richard S. Pauli

OFFICE OF CHIEF COUNSEL
Internal Revenue Service
Washington, DC 20224

CC:D:Br1-734-79
AMBailey

3 OCT 1979

Mr. Richard S. Pauli
3051 Lakeside Drive
Anchorage, AK 99502

Dear Mr. Pauli:

This is to acknowledge your Freedom of Information appeal of the Disclosure Officer's decision denying you access to Form 4789, Transaction Report. Apparently your appeal was inadvertently misplaced in another Division within the Service, and was not received by the Disclosure Litigation Division until September 25, 1979. We apologize for any inconvenience caused by the delay in responding to your letter. We have requested the Anchorage District to forward the document at issue for our review. You may expect our response to your appeal shortly after we receive the document from the Anchorage District. In the interim, should you have any questions concerning the status of this matter or wish to discuss it, please contact Michael B. Frosch, (202) 566-3229, to whom your appeal has been referred for consideration.

Sincerely yours,

LESTER STEIN
Acting Chief Counsel

By: Michael B. Frosch
Chief, Branch 1
Disclosure Litigation
Division

Internal Revenue Service
District
Director

Department of the Treasury
310 K Street, Anchorage, Alaska 99501

Person to Contact: Laverne Arnold
Telephone Number: 271-4254
Refer Reply to: Laverne Arnold
Date: October 29, 1979

Richard S. Pauli
3051 Lakeside Dr
Anchorage, AK 99502

Dear Mr. Pauli:

Your letters of October 8 and 9, 1979, requesting information under the Freedom of Information Act have been referred to me for response.

Enclosed are copies of all documents in the examination file relating to Lakeside Investments for 1977 and 1978.

As you requested, we are also sending all examination records relating to your 1978 individual income tax and an update of 1976 and 1977 individual and 1977 and 1978 corporate returns. One document is being withheld pursuant to exemption (b)(5) as an intra-agency memorandum. The enclosed Notice 393 describes the exemptions claimed and explains your appeal rights.

We have contacted our Washington office regarding your FOI appeal. It is under consideration and you should receive a response within the next few days.

Enclosed is Publication 876, Privacy Act Notice, which should answer the questions you had relating to the authority of the Internal Revenue Service to request information, and a billing document for $7.30.

If you have questions, please call me at the above number.

Sincerely,

Laverne Arnold

Laverne Arnold
Disclosure Officer

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502
December 1, 1979

Freedom of Information Appeal
Comissioner of Internal Revenue
Ben Franklin Station
P.O. Box 929
Washington, D.C. 20044

Gentlemem:
I am appealing the denial of disclosure of one document, an inter-agency memorandum, under my Freedom of Information Request dated October 8 and 9, 1979 . The date of the letter denying this request in October 29, 1979.

Thank you,

Richard S Pauli

Richard S. Pauli

DEPUTY COMMISSIONER OF INTERNAL REVENUE
Washington, DC 20224

JUL 08 1980

Mr. Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99501

Dear Mr. Pauli:

This is in response to your Freedom of Information Act (FOIA) appeal of December 1, 1979, wherein you appealed the decision of the Anchorage District to deny you access to part of a Revenue Agent Report. We are affirming this decision on the basis of FOIA subsections (b)(3), (b)(7)(A), and Internal Revenue Code § 6103(e)(6).

Subsection (b)(3) provides that the disclosure mandate of the FOIA is inapplicable to material specifically exempted from disclosure by statute "provided that such statute . . .

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." We are asserting section 6103(e)(6) in conjunction with subsection (b)(3). Section 6103(e)(6) permits the withholding of return information if the Secretary determines that its disclosure will seriously impair Federal tax administration. Subsection (b)(7)(A) permits the withholding of "investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would (A) interfere with enforcement proceedings . . . ."

Disclosure of the withheld portion of the Revenue Agent Report that you have requested, which was prepared by the revenue agent during the course of his investigation of your individual tax liability and that of Lakeside Investment Trust, will seriously impair Federal tax administration by revealing the scope of the current examination and review of your tax returns. Further, disclosures of the report will interfere with the ongoing civil enforcement proceedings by revealing the specific transactions being investigated by the Examination Division. These transactions are the subject of your potential liability. Subsection (b)(7)(A) was enacted to prevent this type of interference.

If you desire a judicial review of this decision, a complaint may be filed in the United States District Court in the district in which you reside, or have your principal place of business, or where the agency records are located, or in the District of Columbia. The document at issue is located in Anchorage, Alaska.

Very truly yours,

William E. Williams

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502

May 7, 1979

Internal Revenue Service
310 K Street
Anchorage, Alaska 99501

Attn: Mr. Bruce Kinney

Re: Your letter, dated May 2, 1979

Dear Mr. Kinney,

Thank you for your letter concerning auditing my 1977 personal and 1977 and 1978 corporate returns. I will be happy to meet with you at your office, but I find that twelve days notice is inadequate.

On June 22, 1978, your agent, Diane Elm wrote to me requesting an audit on 1976 personal tax return and also requesting returns and information from 1972 to 1977.

On June 28, 1978, I answered by making a Freedom of Information request for the years 1972 to 1978, both personal and corporate. Also, I requested certain information under the Privacy Act of 1974.

You have failed to produce anything on my Freedom of Information request and have refused to answer my question related to the Privacy Act and other listed court cases.

I am asking you personally to locate and expidite my Freedom of Information request and answer any questions mentioned in the above paragraph.

I am requesting the aid of Senators Stevens and Gravel and Congressman Young in hopes that with their urgings, my request concerning the Freedom of Information Act and Privacy Act will be honored. Hopefully, then, we can come to a speedy conclusion on the requested audit.

Sincerely,

Richard S Pauli

Richard S. Pauli

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Person to Contact:
Bruce Kinney
Telephone Number:
(907)271-4268
Refer Reply to:
E:1002
Date:

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502

Rec'd 9/26/79

Dear Mr. Pauli:

Thank you for your letter of May 7, 1979. In your letter you requested that we set another appointment for the examination of your 1976 and 1977 Individual Income Tax returns and your Corporate Tax returns for the years ended March 31, 1977 and March 31, 1978.

I would like to notify you at this time, that I also have your 1978 Individual Income Tax return and the Fiduciary Income Tax returns of Lakeside Investments Trust for the years ending December 31, 1977 and December 31, 1978 for examination.

I have rescheduled your appointment for 9:00 a.m. on Thursday, October 4, 1979 at 3051 Lakeside Drive, Anchorage.

Please refer to the attached list for items I would like available at our meeting.

Two appointments have been set up with you in the past and you canceled both appointments. It appears, for some reason unknown to me, you are trying to delay the examination of your returns. I am notifying you now that I will not allow you to delay the audits, and if you continue to do so, I will have no alternative but to proceed on the basis of information available to me. This would include disallowing the items I asked you to support in our correspondence.

Sincerely,

Bruce Kinney

Bruce Kinney
Revenue Agent

I would like to see the following for each entity I am examining:

Individual Income Tax returns for 1976, 1977, and 1978;

Richard S. Pauli, DDS; A Professional Corporation tax returns for the years ended March 31, 1977 and March 31, 1978;

Lakeside Investments Trust, A Fiduciary Income Tax Return for the years ended December 31, 1977 and December 31, 1978;

Workpapers used in preparing your return;

All books and records concerning your income, expenses, and deductions;

Bank statements and canceled checks;

Duplicate deposit slips;

Savings account passbooks;

Information on other invested funds;

Records of all loans and repayments;

Purchase invoices covering acquisitions of capital items;

Records covering purchases or sales of real estate or other property;

Information on any nontaxable income;

Information on any loans obtained;

Copy of related tax returns for which you directly or indirectly function as an agent, fiduciary, transferor, nominee, trustee, officer, director, owner, grantee, grantor or creator.

In addition, I would like to see paid bills, invoices, canceled checks, and any other documentation to support the following specific items.

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502
October 9, 1979

Internal Revenue Service
District Director
P.O. Box 1500
Anchorage, Alaska 99501

Attention: Bruce Kinney, Revenue Agent

Dear Mr. Kinney:

In your recent undated letter received September 26,1979, you made several statements that need clarification.

1. You stated that I had cancelled two appointments; this was false.
2. You stated that I am trying to delay this series of examinations. This was false. It seems that after waiting almost a year for my Freedom of Information Act request, I finally had to write to my Senators and Congressman to help speed you up! Also you have openly refused to answer certain questions authorized by the Privacy Act of 1974 and other related court cases.
3. You notified me of desire to audit my 1978 Personal Return within nine days or else you would disallow certain legitimate deductions.

For reasons unknown to me, Mr. Kinney, you are attempting to delay the examination of my returns by your noncompliance with the Freedom of Information Act, the Privacy Act of 1974, and previous stated court cases. Your obvious attempts at harassment and actions in bad faith lead me to believe you are not willing to execute a clean, fair audit!

In spite of this lack of respect for the law and my rights, I am still willing to meet with you at a mutually agreeable time, but first, I am requesting a Freedom of Information Act update on 1976 and 1977 Personal and 1977 and 1978 Corporate years and all records you have on my 1978 Personal tax year.

I have appealed to Internal Revenue Service in Washington D.C. on June 4, 1979 reguarding certain items withheld from my past Freedom of Information Act request. It has been four months without an answer! Please expedite this.

I am requesting that you answer the previous questions relating to the Privacy Act of 1974 and various court cases for each of the years you desire to audit.

After you have complied with these request, I will be happy to get together with you.

Sincerely,

Richard S. Pauli

Lakeside Investments
3051 Lakeside Drive
Anchorage, Alaska 99502

Internal Revenue Service
P.O. Box 1500
Anchorage, Alaska 99501

10/8/79

Attention: Bruce Kinney, Revenue Agent

Re: 1002

Dear Mr. Kinney:

I have received your undated letter on September 26, 1979. In this initial correspondence to Lakeside Investments, you informed me that you intended to audit Lakeside Investments 1977 and 1978 returns, that we had a week and a half to meet, produce, and substantiate certain deductions. You also stated that I had cancelled two appointments and if I delayed this audit you would disallow these deductions.

It frankly baffles me, Mr. Kinney, that you could initiate an audit, demand a meeting date, and threaten Lakeside Investments with disallowing certain deductions all in the period of nine days! Is this some new form of governmental efficiency or just good old fashion I.R.S. harassment?

Despite your attempts at harassment and actions in bad faith, I will be happy to meet with you at a mutually agreeable time, after you have answered my Freedom of Information Act request and questions pertaining to the Privacy Act of 1974.

I am requesting under the Freedom of Information Act any records you have for Lakeside Investments for the years 1977, 1978. This request for copies of records and any other information conforms to your agency's procedures and you will promptly make such copies of records available. If you fail to do so, a complaint may be filed in Federal District Court asking for punishment of the responsible persons involved for contempt. I am also requesting under the Privacy Act of 1974, the following:

1. Please state the authority (specific section of the I. R. Code) for the solicitation of the information you desire.
2. Please state whether disclosure of such information is mandatory or voluntary. If mandatory, what penalties will result for noncompliance?

3. Please state the principal and specific purpose or purposes for which the information is to be used in any capacity.
4. Please state the routine uses which may be made of the information or any other use of the information.
5. Please state the effects on the taxpayer if not provided the information requested.

Sincerely,
Lakeside Investments

Richard S. Pauli, Ex. Tte.

Internal Revenue Service

Department of the Treasury

District
Director

310 K Street, Anchorage, Alaska 99501

Richard S. Pauli
3051 Lakeside Drive
Anchorage, Alaska 99502

Person to Contact: Bruce Kinney
Telephone Number: (907) 271-4248
Refer Reply to: E: 1002 BK
Date: October 17, 1979

Dear Mr. Pauli:

Thank you for your letters of 10/8/79 and 10/9/79 regarding the examination of your 1976, 1977, 1978 Individual Income Tax Returns, your corporate tax returns of Richard S. Pauli DDS A Prof. Corporation for the years ending March 31, 1977 and March 31, 1978, and the Trust Return of Lakeside Investments for the years ending December 31, 1977 and December 31, 1978.

I would like to advise you at this time that I will not delay the examination of your tax returns until you receive the information you requested in your "Freedom of Information Act" request.

I have prepared the audit reports and submitted them for processing. The following items have been disallowed due to nonsubstantiation:

1) Form 1040, year ending 12-31-77	
Professional Services	$163,500
2) Form 1040, year ending 12-31-78	
Management Fees	441,447
Returns and Allowances	20,391
3) Form 1120, year ending 3-31-78	
Seminars, Dues	12,420
4) Form 1041, year ending 12-31-77	
Advisory Trustee Fees and Admin Fees	2,000

Richard S. Pauli
October 17, 1979
Page Two

5) Form 1041, year ending 12-31-78

Fiduciary Fees	$12,000

Should you wish to meet with me at a convenient time and place to produce the books and records requested so I could examine them, I would be happy to do so. The results would be submitted for consideration.

If you wish such a meeting, please call me at the above referenced number within five (5) days of your receipt of this letter.

Sincerely,

Bruce Kinney

Bruce Kinney
Revenue Agent

Internal Revenue Service
District Director

Department of the Treasury

Date:

Social Security or
Employer Identification Number:

Tax Year Ended and Deficiency:
See Back of Letter

3051 Lakeside Drive
Anchorage, AK 99502

Person to Contact:

CERTIFIED MAIL

(907) 271-4281

Dear Mr. and Mrs. Pauli:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street NW., Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition. You can get a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address shown above.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to charge your account quickly and will limit the accumulation of interest. The enclosed addressed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires

us to bill you after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

W. E. Williams
Acting
Commissioner
By
John Carlson
John Carlson
District Director

Enclosures:
Copy of this letter
Waiver
Envelope pc

P.O. Box 1500, Anchorage, Alaska 99510

Letter 892(DO) (Rev. 3-79)

Exhibit A

Tax Years	Deficiency	Section	Penalty
12-31-1977	$102,332.00	6653(b)	$ 51,166.00
12-31-1978	$600,233.00	6653(b)	$300,116.00

Internal Revenue Service
District Director

Department of the Treasury

Date:

Social Security or
Employer Identification Number:
92-0062969

Tax Year Ended and Deficiency:

Tax Year Ended	Deficiency	Penalty	Section

c/o Richard S. Pauli, Executive Trustee
3051 Lakeside Drive
Anchorage, AK 99502

Person to Contact:

(907) 271-4281

Dear Mr. Pauli:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street, NW., Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition.

If you dispute not more than $5,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street, NW., Washington, D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed addressed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

Internal Revenue Service
District Director

Department of the Treasury

Social Security or
Employer Identification Number:
92-0041984
Tax Year Ended and Deficiency

Penalty Section 6653(a)

Date:

3500 Latouche, Suite 210
Anchorage, AK 99504

Person to Contact:
M. Nielson:90
Contact Telephone Number:
(907) 271-4281

CERTIFIED MAIL

Dear Mr. Pauli:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

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If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

W. E. Williams
Acting
Commissioner
By
John Carlson for
John Carlson
District Director

Enclosures:
Copy of this letter
Waiver
Envelope
pc

P.O. Box 1500, Anchorage, Alaska 99510

Letter 892(DO) (Rev. 3-79)

Exhibit A

Internal Revenue Service
District Director

Department of the Treasury

Date:

Social Security or Employer Identification Number:
92-6018403

Tax Year Ended and Deficiency:
Penalty Section 6653(b)

c/o Richard S. Pauli-Executive Trustee
6500 LaTouche, Suite 210
Anchorage, AK 99504

Person to Contact:
M. Nielson:90

Contact Telephone Number:
(907) 271-4281

CERTIFIED MAIL

Dear Mr. Pauli:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

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Sincerely yours,

W. E. Williams
Acting
Commissioner
By John Carlson mp
John Carlson
District Director

Enclosures:
Copy of this letter
Waiver
Envelope pc

P.O. Box 1500, Anchorage, Alaska 99510

Letter 892(DO) (Rev. 3-79)

STATEMENT OF JOE VALIENTE

Senator **Abdnor**. Is Mr. Valiente?

Are we rushing you? Although you're scheduled for this afternoon, we'd be happy to have you now.

We appreciate you coming ahead of schedule. Do you have a written statement?

Mr. **Valiente**. I believe you have the statement that I gave the secretaries yesterday.

Senator **Abdnor**. I assure you, Mr. Valiente, we'll put your entire statement into the record. You can handle it any way you care to. Read it or summarize it.

Mr. **Valiente**. Sir, the information that I have given you was a quick order attempt to give you an overview of the involvement of the Universal Life Church in regards to the U.S. Government. That overview really would take some time because the church has been involved with the IRS since its conception, roughly 1969. The exhibits that I've given you are to try and document, or an attempt to document and support the intrusion into the church's religious affairs as well as the affairs of the members of the church.

DESCRIPTION AND ACTIVITIES OF ULC

Now, the Universal Life Church, Inc., referred to nationally as ULC, is a California nonprofit religious corporation; a bona fide church and religious organization entitled to both Federal and State tax exempt status, both in California and across the country in every State.

Members of the church have engaged in lawful, constitutionally protected religious activity by seeking and obtaining clergy ordination credentials as ministers of the ULC and in furtherance of their free exercise of religious beliefs have sought and obtained charters from the Universal Life Church, Inc., to establish congregations of the ULC.

Now the total number of the church membership is in excess of 11 million members. The total number of congregrations throughout the country and in foreign countries is over 50,000. The church at present is ordaining and receiving a membership of approximately 10,000 members a week.

For some time IRS officials and agents have acted contrary to existing law and thus not within their discretionary responsibility. On exhibit—I think, the first exhibit that you'll see there, is the James Battin decision in which the United States was taken into court and was asked to answer two questions. First, was the Universal Life Church a church? I've underline for you where the Government admits in 1974, that the Universal Life Church was a church. Second, the IRS was asked, or the courts was asked, was the ordination procedure of the church and was the chartering of churches a religious activity and could it do so? And I've underscored that. Certainly the ordination of ministers and the chartering of churches are acceptable activities of a religious organization. Now the IRS admitted that too.

Now one of these things which you do not have, that I have got runoff since yesterday, is a copy of the complete court transcript and if you'd like a copy of that, I can leave that with you. That decision there is a landmark decision that is used now across the country. It's used in many ways to distinguish between traditional and nontraditional churches. it is an attempt of the IRS to try to set up some kind of an establishment of religion where they will recognize churches that have operated in a certain type of religious organization or mythology or format to exclude those churches which do not wear a certain hat or look a certain color. Now to use one of the descriptions that the IRS has used locally, you must act and smell and look like a church in order to be a church.

Now, the Federal ruling on exhibit B gives the church the tax exempt status——

Senator ABDNOR. Was that statement from the IRS?

Mr. VALIENTE. The IRS has used throughout the country that a church must look, act and smell like one in this country to be one. Now that's pretty hard in this country when there's no definition of what a church is and I think we could go across this room right now and you'd be very hard pressed to tell me what a church is.

Now the Federal ruling is on exhibit B, granting the churches tax exempt status. Exhibit C is the certificate of the State of Alaska, authorizing us to do business as a nonprofit organization.

Now in 1974, that decision was given by James Battin and yet in 1975, 1½ years later, here's a manual supplement for applications for recognition of exemption from Federal income tax filed by Universal Life Church organizations. The Universal Life Church in section 2 there, Modesto, Calif., issues mail ordination certificates and church charters for a nominal fee. The Service is aware of situations where those who have obtained such certificates and charters use them to avoid part or all of their tax liability.

That was the beginning as far as my records show of an attempt of the IRS to single out for selective enforcement the Universal Life Church and contributors to the church. In implementation of that, you'll see an exhibit E where they have sent out to petitioners of the San Francisco District—this is signed by Michael Sassy where it states—basically in the second or third paragraph—examination of these nontraditional churches require the service to make a difficult decision involving the definition of church and religion. Again, there's two things to note there. The title there, nontraditional church and it is basically grouping those people that do mail out credentials by mail, or that use the mail media or however you want to term it, if you use the mail then you're a nontraditional church. Now that's pretty hard in this day when you consider that most of the television media uses the media to obtain—or the mail to obtain donations. The point being that it's a nontraditional church and the mail order ministry that's employed here, that's what I want to focus on.

IRS ACTIVITIES AGAINST ULC

Now in Alaska, the first public attempt to discredit the church and to foster some kind of ill feelings for the church occurred in 1979, that's exhibit F, page 11 there and the title of it, tax man vows to search after false returns. The whole implication of that is that anyone that donates to the church or becomes an ordained minister of the church or seeks a charter from the church to serve a conregation is automatically filing a false return. Without even examining the return, without even examining anything about it, it implies that the church is organized to bascially issue false donation receipts or contribution letters.

Now sometime in the winter of 1980, the IRS started to really go after the church accounts and at that time they did close some of the accounts because the banks thought that they were being—they were having to spend too much money trying to keep up with these audits of the church. And exhibit H is that.

I filed a discrimination complaint against the National Bank of Alaska and on page 13, first paragraph, "The evidence showed that respondent had expended considerable amount of dollars," that's the bank, and person-hours with Universal Life Church accounts that were being audited by IRS. The evidence further indicates that IRS plans to audit and investigate more of "Universal Life Churches." Sir, there is no examination of a church and you'll be hardpressed to find a regulation except Internal Revenue Code 7605, which we'll get to in a second, that allows for an examination of a church once it's recognized as an entity, once it's recognized as a Federal tax exempt organization, 501(c)(3). There's no examination of a church except from related activity. Now the IRS cannot possess the authority to do something which you gentlemen do not have the authority to do either. Because of the first amendment, just can't go into a fishing expedition to examine a church's books of accounting. There's no process for it.

I personally, went through one of the audits where members of the church were being selected for audit and you'll see on page 18 there, where I've asked why after going through the audit, my donations weren't accepted through the Universal Life Church. They didn't answer the reply but they said that they hadn't made a determination till they get my personal checking account. And basically right now, they're seeking to have it enforced out of Seattle. As I said, if the Congress doesn't have the right to examine a church, neither does the IRS.

If you'll look on exhibit M, page 19 and 20, those are the questions that Terence Zeznock, who has been called a special coordinator for nontraditional churches in Alaska, if you'll see those four or five questions that this man asked me, you'll find that it's an intrusion into the affairs of the church. The reason I didn't answer those questions is because I don't have to.

Now the law states that anyone that makes a contribution to a church or a recognized nonprofit organization there's a procedure for following it to make sure that that donation did not inure to the individual under net earnings but they made no attempt to contact Modesto, Calif. They've not made one attempt on this particular or in many of the audits across the country, to contact the mother institution. But in short have tried to sever the relationship between the mother church and the congregations.

FREEDOM OF INFORMATION ACT

Under the Freedom of Information, which I had a little bit better luck in obtaining, you'll find exhibit N, pages 21 and 22, which I imagine was sent to the district counsel in Seattle—I don't know—for enforcement of my checking account. And on the administrative summons control form, No. 10—or pardon me, criminal investigation of program information, it shows that I'm an illegal tax protestor. It ranks that with strike force, drug trafficker, racketeer. It's amazing because I've only had one confrontation with them and I've only talked to those people one time and yet, they've made a determination on me as being an illegal tax protestor and the only thing I can presume is because I'm a member of the Universal Life Church.

IRS EXAMINATION OF UNIVERSAL LIFE CHURCH

In regard to the examination of the church, you'll find a copy of the Internal Revenue Code for the examination of a church, 7605. Their restriction on examination of churches:

> No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in carrying on of an unrelated trade or business, or may be otherwise engaged in activities which may be subject to tax unless it's done by a principal officer of Internal Revenue district.

Mr. Zeznock has no authority to question me about the church, none whatsoever, none whatsoever.

And early this year, 1981, you'll find exhibit P, which was handed out here in town in Anchorage. That's basically dealing with the Universal Life Church. The title on it is nontraditional churches court decisions. Exemptions—I want you to understand that this statement is taken after knowing full well that the Universal Life Church already addressed in 1974, its right to ordain ministers, and its right to charter congregations. The Universal Life Church in Modesto was held to have exempt status by the district court in *Universal Life Church, Inc.* v. *United States.* In that case, the Government conceded that ULC-Modesto passed the organization test.

Senator MURKOWSKI. Mr. Valiente, you said that this was handed out——

Mr. VALIENTE. Yes, sir.

Senator MURKOWSKI [continuing]. By the IRS?

Mr. VALIENTE. Yes, sir.

Senator MURKOWSKI. Where?

Mr. VALIENTE. Right here in town sir.

Senator MURKOWSKI. Well, how was it——

Mr. VALIENTE. Sir, I don't have any idea how it was handed out because I don't go there unless I'm summoned. But that was handed out.

Senator MURKOWSKI. How do you know that it was handed out by the IRS?

Mr. VALIENTE. Well sir, the way I've gotten it, is that when someone goes there to seek information about the church——

Senator MURKOWSKI. Goes where?

Mr. VALIENTE. To the IRS, that this has been handed out. Now whether that's been over the counter or whether that's been done in a room or whatever, I don't know sir, but I know that this has come to me and it's been run by the IRS.

Senator MURKOWSKI. Well, how do you know, if you didn't get it personally and you don't have reference to some of you people who did? How do you know this is physically being handed out by IRS?

Mr. **Valiente**. Well, I don't think the church would take it on itself to put this out against itself because it's in a derogatory manner about the church.

Senator **Murkowski**. How did you get this then?

Mr. **Valiente**. Well, it was given to me by a member of the church.

Senator **Murkowski**. A member of the church got it from IRS, is that right?

Mr. **Valiente**. Yes, sir.

Now this is the bottom part: "The court held that since the honorary doctor of divinity was strictly a religious title with no academic standing, it didn't violate the California Educational Code." That was one of the problems that the church had. It was issuing honorary doctor of divinity degrees. The next page: "The ULC-Modesto however, received an exemption only for itself and not a group exemption."

Sir, we're not a group of churches. We're just one church. Just like the Catholic Church is one church, the Mormon Church is one church. Each part of the church is part of the whole. Each congregation has the functions to administer its own beliefs. Now here the IRS, after Battin said that the church had the right to charter congregations and ordain ministers in the furtherance of their religious activities, the IRS comes across here and says no, that's not the case at all.

I've got just one more thing that I want to—I don't have it here.

SERVICES OFFERED BY UNIVERSAL LIFE CHURCH

Now we moved into a building here in Anchorage, exhibit I, we moved into a building here in Anchorage around the first of the year in order to do weddings. People were requesting church buildings. We don't believe in church buildings as such, but we got this building so that we could serve the public a little bit better. We're a nondenominational church. We'll marry atheists, Baptists, Buddists, Jewish people, which I don't think any other church in Anchorage can say that except for one other, the Unitarian Universal. So we do provide a service in that end of it. But no sooner do we get in this building that the IRS calls a Sarah Mott at the Anchorage Daily News with Mr. Zeznock to give their side of the church in Alaska and across the country. He refers to us as a mail-order church, as a nontraditional church, as an alternative church, mail-order minister licenses being issued, drugstore parsons——

Senator **Abdnor**. Did they write you that?

Mr. **Valiente**. Pardon?

Senator **Abdnor**. Did they write you that?

Mr. **Valiente**. That's what they call us.

Senator **Abdnor**. Oh, the newspaper.

Mr. **Valiente**. The newspaper quoting and these are in quotes, and I'm sure everything we've got to substantiate whatever the IRS use of those terms, "alternative to standard religions, mail order charters," and then it makes the implication that donors to the church can probably expect to be audited somewhere down the road.

I think to conclude all this or to summarize it all, the church was found to be exempt. The arguments the IRS is trying to use now were brought before the court in 1974 and it's just been a continual uphill battle with the IRS to recognize the congregations of the Universal Life Church.

Since the Congress can't make no law on the church, it's evident that the Universal Life Church with the membership growing as it is, someone will have to make some kind of a determination of the Universal Life Church. Instead of harassing the members of the church and seeking to take away their first amendment rights to a free association, to associate not only privately but publicly to be members of a church which the IRS does not like, someone is going to have to address this issue. But you're talking about a lot of members in this church.

Thank you.

Senator ABDNOR. Mr. Valiente, the Universal Life Church was originated what year?

Mr. VALIENTE. Well, actually the church was formed in 1962 and the IRS confiscated $10,000 of its checking account in 1969.

PROBLEMS ENCOUNTERED BY UNIVERSAL LIFE CHURCH

Senator ABDNOR. In other words, that's when your first problem started?

Mr. VALIENTE. Well, actually the church was ordaining ministers during Vietnam and that was the first problem that the IRS—not the IRS, but the FBI and CID and other agencies had problems with the Universal Life Church because the law says that if you were a minister you didn't have to go into the draft just as though as if you were a student or if you have blown your shoes off or feet off or anything, you didn't have to go into the draft. So that was the beginning of the hassles in the 1960's, was the Vietnam war.

Senator ABDNOR. This had been going on constantly ever since——

Mr. VALIENTE. Sir, I just brought you some of what I have. I just brought you some of what I have and this locally, this is not nationally.

Senator ABDNOR. What's happening here is happening in California?

Mr. VALIENTE. It's all over the country right now.

Senator ABDNOR. How many States are you in?

Mr. VALIENTE. Sir, we're in every State, with congregations in every State.

Senator ABDNOR. Do you know of any similar group outside of your church having the same trouble?

Mr. VALIENTE. Well sir, it's been implied that any religious organization that uses the mail to ordain ministers or to charter congregations should be singled out as a nontraditional church. Now the fact that they even use the word "nontraditional," should tell you something right there. What's traditional? Or at what point in time do the traditional churches become nontraditional? When they use the mails? Because Oral Roberts receives 20,000 pieces of mail a day but yet he's not called a mail-order ministry, he's called a television media or whatever. But I believe it's going to have to come from Congress what's going to be done with the Universal Life Church because I don't believe that the IRS has powers.

TAX LOOPHOLES

Senator **Murkowski**. Do you feel that there should be any restriction on the apparent concern that the IRS has expressed over the validity of having some type of an affiliation that is actually designed as a tax loophole rather than a legitimate religious affiliation? In other words this thing could, by circumstance, result in actually nothing more than loopholes and these ministers could be ordained through the mail and not practice any type of religious affiliation at all.

My question to you is, how do you handle the grey area where this exposure lies in conformity with the situations that exist today? The IRS is challenging this and it's up to the church to substantiate the legitimacy of the religious convictions but recognizing there's got to be some general area so that we don't have a situation of taking advantage of the tax loophole?

Mr. **Valiente**. Senator Murkowski, I think what you've seen here today is an example of the tax laws and the loopholes that have been created. Now the church has nourished and it's planted the seeds and cultivated and harvested daily the fact that it's a tax exempt organization. To eliminate what you're talking about would mean to tax the church and when I say tax the church, I mean the church as a system which means you would have to be the first one to tell the Pope that he would have to be taxed. I don't think that the U.S Government has got that power to tax the church. In essence, the church must be able to exist without interference or the separation of church and state ceases to be.

There is no solution to your problem with the Universal Life Church except to say that the church cannot ordain ministers. Its members cannot hold meetings, that they cannot have the free association we've talked about to disseminate their belief and you can't do that. There's just no authority to do it right now. There's just no authority. You're going to find that the church in this country is going to become more and more of a problem to the IRS as a system as it grows because you're going to find that they're going to start using things and going to other methods which are nontraditional to raise money and to be a viable entity in this country because they are suffering from the same thing that your pocketbook and mine is.

So the IRS and the church as a system are going to have a head-on confrontation within too many years. It's unavoidable unless, as you people have tried to do this last week, and as you people are trying to do for some time is to try to pull this country together to where it can stand on its own two feet without hurting everybody here. We've got to make this country stronger. You've got to make the individual be able to have a better life so that he won't look to these tax holes and the way that the laws have been set up to try to make it.

I don't know if I've answered your question, sir, but I really don't know what you can do about the church.

Senator **Murkowski**. Thank you.

Senator **Abdnor**. Senator Stevens, do you have anything?

Senator **Stevens**. No; well, I think that you've outlined a dilemma all right but I certainly wouldn't take the position that anyone can call themselves a church and thereby come under the constitutional protections of the religious—first amendment.

Mr. VALIENTE. No, sir, I wouldn't say that. But I would say that once the organization has already passed the organizational test and is organized for religious purposes and the system has tried to bounce it out and saying it wasn't a church and then in turn that it was a church, and then to tell that church how it will operate, how it will function, it's beyond the discretionary powers.

Senator STEVENS. How many ministers do you have of the church here?

Mr. VALIENTE. In Alaska?

Senator STEVENS. Yes.

Mr. VALIENTE. Sir, I would venture to say we have over 6,000, 7,000, throughout the State.

Senator STEVENS. And how many members do you have?

Mr. VALIENTE. Probably twice that, three times that. But sir, because of the situation that we have with the IRS, many of these people just as these people who were just talking to you here a few minutes ago, with as much media coverage as the Universal Life Church has had, practitioners with taxes, audits, and things like that, a lot of these members are afraid to even show their heads. It really does; it takes a lot of power and conviction to come out and say you're a member of the church when that church has been viewed by the IRS as some kind of a mutant in need of an abortion. And they tried to have one in 1974.

Senator ABDNOR. Thank you.

Mr. VALIENTE. Thank you very much.

[Reference material submitted by Joe Valiente follows:]

INTERNATIONAL HEADQUARTERS
Universal Life Church, Inc.
601 THIRD STREET, MODESTO, CALIFORNIA 95351

BISHOP KIRBY J. HENSLEY, D.D.
PRESIDENT

REV. LIDA G. HENSLEY
SECRETARY

July 30, 1981

Senator Ted Stevens
Box 2 701 'C' Street
Anchorage, Alaska 99513

Dear Senator Stevens,

I hope that these few lines find you prospering and enjoying our beautiful Alaskan summer. I also hope that you and your family have taken the time to enjoy it.

This letter is written to you because of your interest in the activities of the Internal Revenue Service. You are recognized in Alaska as a defender of the civil rights and quarantees of the people as prescribed in the United States Constitution.

Let me begin with a short introduction of myself and background. I have been in Alaska since 1960. I attended high school and college here in Alaska. I have worked in construction, super markets, and in the trucking industry. Currently, I am employed as a full time minister for the Universal Life Church, Inc., which has its headquarters in Modesto, California. I am also the Alaska resident agent for the Church, as well as Board member for the Church. It is now about the Church and the IRS's intrusion into our religious affairs that I write this letter. The following is documentation to support some of the intrusion and how they are violating our civil rights.

1. The Universal Life Church, Inc. (ULC) is a California non-profit religious corporation, a bona fide church and religious organization, entitled to both federal and state tax-exemption per judicial decree, see EXHIBIT A. Pursuant to said decree the IRS issued a ruling letter confirming the ULC's tax exempt status in 1976, see EXHIBIT B. The state of Alaska recognizes the ULC as a non-profit corporation, see EXHIBIT C.

2. Members of the Church have engaged in lawful, constitutionally protected religious activity by seeking and obtaining clergy ordination credentials as ministers of the ULC and in furtherance of their free exercise of religious beliefs, have sought and obtained charters from the Universal Life Church, INC. to establish congregations of the ULC. Congregations have been established in all fifty states of this country and in other countries. The total number of members composing such chartered congregations is in excess of 50,000 (fifty thousand). Total individual clergy, ministers and members of congregations is in excess of 11,000,000 (eleven million).

3. For some time, IRS officials and agents have acted contrary to existing law and thus not within their discretionary responsibilities. Despite the above cited judicial decree, the IRS has singled out the ULC for individual attention. As early as December, 1975, the IRS had caused to be issued a Supplement to its Manual on Exempt Organization Audit Procedures, see EXHIBIT D. Said Supplement refers all Universal Life Church, Inc. organizations to the IRS National Office with the stated inference that such organizations were part of a tax avoidance scheme. The IRS has implemented the Supplement by issuing notices to attorneys, Certified Public Accountants, and other tax practitioners stating that "non-traditional" churches or "mail-order" ministry type operations were organized essentially to avoid income taxes. A copy from Michael Sasi, District Director, is incorporated as an example of said notices, see EXHIBIT E.

Our Church since its inception has issued charters to those of its ministers who wish to establish a local congregation of the ULC. That activity was duly noted by the United States District Court as "accepted activities of religious organizations". The

IRS admitted that the ordination of ministers and the chartering of churches are accepted activities, see EXHIBIT A. Such caterization as the Supplement and letter to practitioners constitutes further governmental entanglement with religion, and purports to create an unconstitutional establishment of religion by recognizing "traditional" churches and churches such as the ULC.

4. On September 4, 1979, the IRS Alaska district director, Frank Berria, and Gil Hjellen of the Alaska Department of Revenue, held a joint press conference on mainly the ULC. This conference publically referred to the Church as a "mail-order clergy warehouse", "drugstore parsons", "tax dodgers" and that the state and the IRS would automatically examine any Universal Life Church, Inc. contributions. This conference created a climate of confussion, uncertainty and jeopardized the bona fides of the Church in the dissemination of its religious beliefs. See EXHIBIT F.

5. By January, 1980, all congregational accounts of the ULC were being closed at the National Bank of Alaska. The accounts were not profitable for the bank, according to Robert Gray, senior vice president of the bank. The ULC filed a religious discremination complaint with the Alaska Human Rights Commission on February 13, 1981. Their investigation determined that because of actual and potential IRS audits of ULC congregational accounts, the bank was losing profits by maintaining the accounts. See EXHIBITS G and H.

6. In January, 1981, various congregations leased together a church building in Anchorage at Arctic and Tudor Roads. The Anchorage Times and the Daily News covered the commencement of services, see EXHIBITS I and J. Ministers not only conduct public services weekly but also performs weddings, baptismals and funeral services as well. We counsel members and non-members in all areas of life as requested. We are still using the building at this time.

7. Just when the members are in their new building, the IRS and its agents again rekindle their attack on the ULC. On March 7, 1981, an article appears in the Anchorage Daily News. This article, written by reporter Sarah Mott, was prompted by a call from Agent Terry Zernock who wanted to tell the IRS's stand on the Universal Life Church, Inc. In the news release, he refers to the ULC as a "mail-order minstries", a "mail-order church", a "non-traditional church", as "alternative churches", as "alternatives to standard religions". This distinction creates an establishment of religion by official recognition of "traditional" churches and the harassing of contributors and members of "non-traditional" churches such as the ULC. See EXHIBIT K.

8. By using the media, phone, investigators, auditors and other unknown persons, Mr. Zernock, as the IRS district coordinator for non-traditional churches in the Anchorage area, has caused to be disseminated false and erroneous information concerning the Universal Life Church, Inc. He and his assistant auditors, Fred Reynolds, Norman Schmidt and others, have had a wilful and reckless disregard for the rights of the ULC and it's members. Zernock has caused to be distributed information ignoring that the Universal Life Church, Inc. has a federal tax-exempt status. His statements purport disallowing charitable contributions to local congregations and even threatens criminal prosecution of our members or contributors. By singling out "mail-order ministries", the IRS has recognized "traditional" churches as entitled to tax exemption as long as no "mail-order ministry" is involved. The Universal Life Church, Inc. has largely been active via such so-called "mail-order ministry" wherein an individual wishing to become ordained as a minister of the ULC orders such ministerial credentials via mail. The fact that our Church uses the mails for this purpose should be of no consequence to the IRS. This pattern of illegal and wrongful conduct against mail-order ministries constitutes excessive and impermissable entanglement of government with religion, contra Church's First Amendment rights.

9. Rather than follow its own established procedures for verification of charitable contributions as Treasury Regulation Section 1.170 A-1 (a)(iii), Zernock, Reynolds and Schmidt have regularly engaged in a pattern of illegal and wrongful conduct by either disallowing contributions to the Universal Life Church, Inc. or not making a determination at all. They have independently made this determination without consulting the ULC in Modesto, California. By disallowing or suspending such charitable contributions upon audit of an individuals contributor's tax returns for a given year,

future years contribution to the ULC have been and will continue to be withheld by individuals who know that such contributions will be wrongfully disallowed by the IRS or held in suspense. Such disallowances seriously jeopardize the ability of the ULC to survive as a viable, legally constituted religious organization since its fund raising ability is restricted by action on the part of the IRS. See EXHIBIT L and M.

10. On February 24, 1981, my wife, Bobby, and I went through one of Zernock's audits on the ULC. Shortly thereafter, we requested under the authority of the Freedom of Information Act from the IRS information they had pertinent to us. From what we received, there was a Certificate of Service of Summons and Notice and an Administrative Summons Control Form. He refers to us on the Control Form as an "Illegal Tax Protestor". Because we are members of the Universal Life Church, Inc., he has accused us of being criminals, abridged our First Amendment right and our right to contribute to a tax-exempt church. See EXHIBIT N.

11. During these audits, the IRS agents above and others unknown, have virtually ignored the First Amendment as well as those enacted by Congress to restrict government intrusion into the affairs of churches and religious organizations. Reference EXHIBIT N. Zernock questioned us about the Church, its books of account and the ministry in general. He had in his possesion a letter documenting our contributions to the Universal Life Church, Inc. from the vice president of the Church. He ignored the letter as well as IRC 7605-1 (c)(3), Restriction on Examination of Churches, which mandates that there shall be no examination of the books of account of a church or convention or association of churches unless a principal internal officer for an internal revenue region believes that the church or convention or association of churches may be engaged in a trade or business not related to the churchs' religious functions. His questions at our audit are illustrative of the pervasive and excessive governmental entanglement with religion. See EXHIBIT O.

12. One last illustration of the IRS's actions, conduct and wilful disregard of existing laws and regulations. It is the IRS's persistent refusal to recognize the Universal Life Church, Inc. and its local congregations as integral parts of a single church entitled to tax exemption, per judicial decree, see EXHIBIT A.

The IRS, and Zernock in particular, have caused to be disseminated information both to the media and by handouts that congregations of the ULC are subordinate to or satillites of the ULC and thus not tax exempt. See EXHIBIT K and IRS Handout on "Non-Traditional Churches", EXHIBIT P.

Since the ULC has already qualified as a bona fide church and religious denomination, it follows that all of its activities are also exempt from taxation including "those which it conducts through a separate corporation . . . or other separate entity which it wholly owns and which is not operated for the primary purpose of carrying on a trade or business for profit." Treasury Regulation Section 1.511-2(a)(3)(ii).

The IRS and its auditors have wilfully failed and continue to fail to recognize that the Universal Life Church, Inc.'s congregations are integral parts of the one Church. Each congregational charter is authorized to carry out the functions of a church (ministration of sacerdotal functions and conduct of religious worship).

In summary, the course of conduct and activities of the IRS and their agents have damaged and threaten to damage ULC member's reputations, adversely affecting our free exercise of religious beliefs, our rights to associational privacy, burdening our exercise of the rights of free speech, assembly and our freedom of religion as quaranteed by the First Amendment of the Constitution.

The IRS and their agents, interfere with, discourage and deter the Universal Life Church and membeas from openly exercising their freedom of religion in contravention of our rights.

I ask that you help our members and myself, as a representative of the ULC in Alaska, eliminate the course of conduct and activities of the IRS. It is my hope that soon the Internal Revenue Service and its agents can be ordered to issue corrective notices to all receipients of the IRS's false and erroneous information regarding the Universal Life Church, Inc. and our clergy.

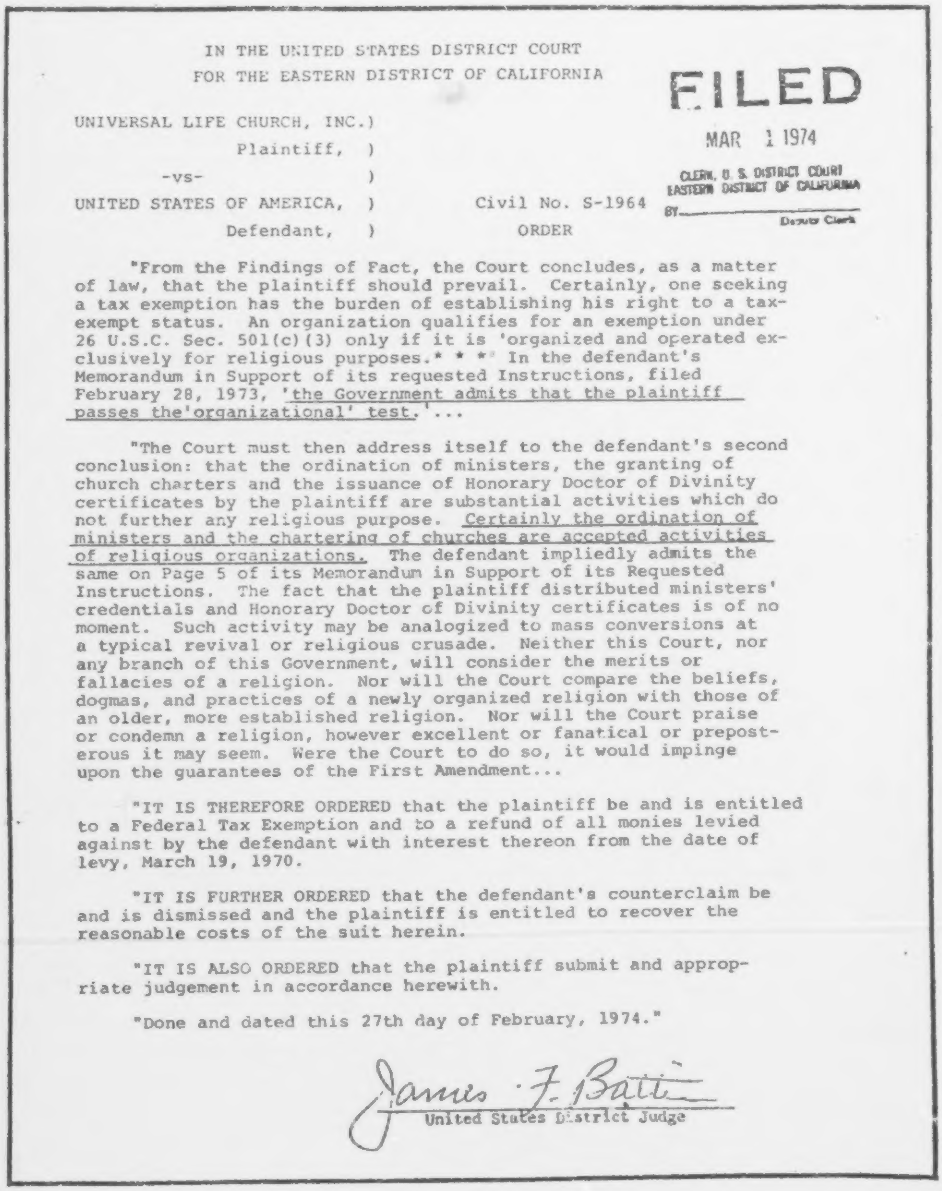
I look forward to your reply and hope to see you in the near future. Thank you in advance for your assistance.

Yours In The Faith,

Joe Valiente

Bishop Joe Valiente, D.D.
Universal Life Church, Inc.
Alaska Resident Agent
P.O. Box 4-2669
Anchorage, Alaska, 99509

(EXHIBIT A)



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FILED
MAR 1 1974
CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY ______ Deputy Clerk

UNIVERSAL LIFE CHURCH, INC.)
Plaintiff,)
-vs-)
UNITED STATES OF AMERICA,) Civil No. S-1964
Defendant,) ORDER

"From the Findings of Fact, the Court concludes, as a matter of law, that the plaintiff should prevail. Certainly, one seeking a tax exemption has the burden of establishing his right to a tax-exempt status. An organization qualifies for an exemption under 26 U.S.C. Sec. 501(c)(3) only if it is 'organized and operated exclusively for religious purposes.* * * In the defendant's Memorandum in Support of its requested Instructions, filed February 28, 1973, 'the Government admits that the plaintiff passes the'organizational' test.'...

"The Court must then address itself to the defendant's second conclusion: that the ordination of ministers, the granting of church charters and the issuance of Honorary Doctor of Divinity certificates by the plaintiff are substantial activities which do not further any religious purpose. Certainly the ordination of ministers and the chartering of churches are accepted activities of religious organizations. The defendant impliedly admits the same on Page 5 of its Memorandum in Support of its Requested Instructions. The fact that the plaintiff distributed ministers' credentials and Honorary Doctor of Divinity certificates is of no moment. Such activity may be analogized to mass conversions at a typical revival or religious crusade. Neither this Court, nor any branch of this Government, will consider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Court to do so, it would impinge upon the guarantees of the First Amendment...

"IT IS THEREFORE ORDERED that the plaintiff be and is entitled to a Federal Tax Exemption and to a refund of all monies levied against by the defendant with interest thereon from the date of levy, March 19, 1970.

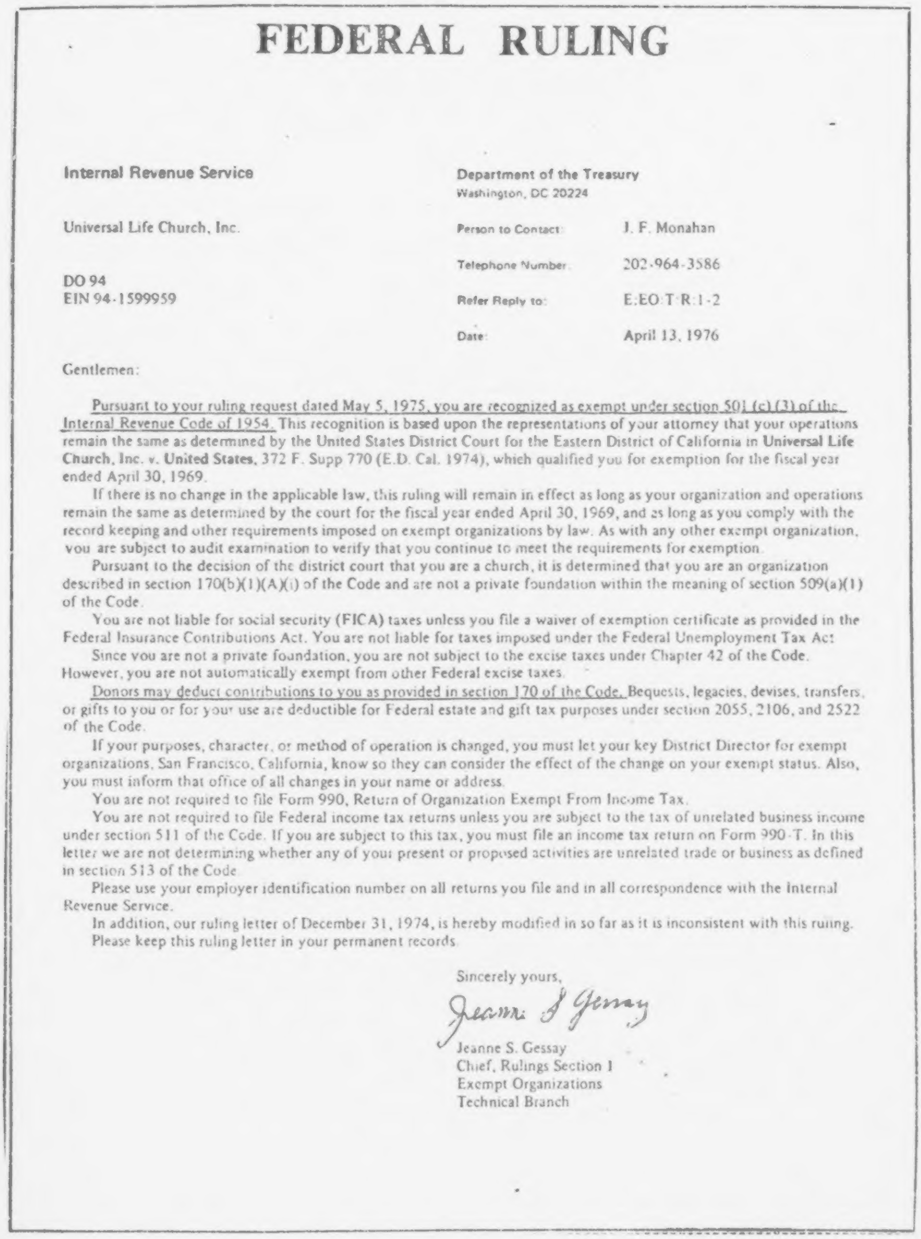
"IT IS FURTHER ORDERED that the defendant's counterclaim be and is dismissed and the plaintiff is entitled to recover the reasonable costs of the suit herein.

"IT IS ALSO ORDERED that the plaintiff submit and appropriate judgement in accordance herewith.

"Done and dated this 27th day of February, 1974."

James F. Batt
United States District Judge

(EXHIBIT B)



FEDERAL RULING

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Universal Life Church, Inc.

Person to Contact: J. F. Monahan
Telephone Number: 202-964-3586
Refer Reply to: E:EO:T:R:1-2
Date: April 13, 1976

DO 94
EIN 94-1599959

Gentlemen:

Pursuant to your ruling request dated May 5, 1975, you are recognized as exempt under section 501 (c) (3) of the Internal Revenue Code of 1954. This recognition is based upon the representations of your attorney that your operations remain the same as determined by the United States District Court for the Eastern District of California in **Universal Life Church, Inc. v. United States**, 372 F. Supp 770 (E.D. Cal. 1974), which qualified you for exemption for the fiscal year ended April 30, 1969.

If there is no change in the applicable law, this ruling will remain in effect as long as your organization and operations remain the same as determined by the court for the fiscal year ended April 30, 1969, and as long as you comply with the record keeping and other requirements imposed on exempt organizations by law. As with any other exempt organization, you are subject to audit examination to verify that you continue to meet the requirements for exemption.

Pursuant to the decision of the district court that you are a church, it is determined that you are an organization described in section 170(b)(1)(A)(i) of the Code and are not a private foundation within the meaning of section 509(a)(1) of the Code.

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for taxes imposed under the Federal Unemployment Tax Act.

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes under section 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operation is changed, you must let your key District Director for exempt organizations, San Francisco, California, know so they can consider the effect of the change on your exempt status. Also, you must inform that office of all changes in your name or address.

You are not required to file Form 990, Return of Organization Exempt From Income Tax.

You are not required to file Federal income tax returns unless you are subject to the tax of unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Please use your employer identification number on all returns you file and in all correspondence with the Internal Revenue Service.

In addition, our ruling letter of December 31, 1974, is hereby modified in so far as it is inconsistent with this ruling.

Please keep this ruling letter in your permanent records.

Sincerely yours,

Jeanne S Gessay

Jeanne S. Gessay
Chief, Rulings Section 1
Exempt Organizations
Technical Branch

(EXHIBIT C)

State of Alaska

Department of Commerce & Economic Development

CERTIFICATE OF AUTHORITY

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that duplicate originals of an Application of UNIVERSAL LIFE CHURCH, Inc.

for a Certificate of Authority to transact business in this State, duly signed and verified pursuant to the provisions of the Alaska Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues this Certificate of Authority to UNIVERSAL LIFE CHURCH, Inc.

to transact business in this State under the name of

UNIVERSAL LIFE CHURCH, Inc.

and attaches hereto a duplicate original of the Application for such Certificate.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this

16th day of January A.D. 19 80

Charles R. Webber

CHARLES R. WEBBER
COMMISSIONER OF COMMERCE
AND ECONOMIC DEVELOPMENT

(EXHIBIT D)

Manual Supplement

Department of the Treasury
Internal Revenue Service

December 19, 1975

77G-3
4(11)G-46

Applications for Recognition of Exemption from Federal Income Tax Filed by Universal Life Church Organizations

Section 1. Purpose

This Manual Supplement provides instructions for the handling of applications for recognition of exemption from Federal income tax filed with the Service by Universal Life Church organizations.

Section 2. Background

.01 The Universal Life Church, Inc., Modesto, California, issues mail order ordination certificates and church charters for a nominal fee. The Service is aware of situations where those who have obtained such certificates and charters use them to avoid part or all of their tax liability.

.02 It is not unusual for such a church to be established in an individual's home and for that individual to claim tax benefits as a member of a religious order or as a minister. Thus, the activities of individuals and organizations affiliated with the Universal Life Church impinge on income tax, employment tax, and exempt organization issues. A unified approach to all these issues is desirable.

03 The central handling of applications from Universal Life Church organizations for recognition of exemption from Federal income tax is an integral part of a unified approach in accordance with policy statement P-(11)-31.

Section 3. Procedures

.01 Effective immediately, all applications for recognition of exemption from Federal income tax submitted by organizations chartered by or affiliated with the Universal Life Church, Inc., should be referred to the National Office for consideration in accordance with IRM 4(11)30 (to be reissued in IRM 7700). This procedure applies both to pending applications and to future receipts.

.02 Application cases for organizations chartered by or affiliated with Universal Life Church that are in the conference stage should be referred to the National Office as requests for technical advice under Revenue Procedure 73-8, 1973-1 C.B. 754.

Section 4. Effect on Other Documents

This supplements IRM 4(11)30. This "effect" should be so annotated by pen and ink beside the text cited, with a reference to this Supplement. This also supplements IRM 7700 (to be issued) and Chapter (52)00 (to be issued) of IRM 7751, Exempt Organizations Handbook.

/s/ Alvin D. Lurie
Assistant Commissioner
(Employee Plans and Exempt Organizations)

[The next page is 8947-29.]

(EXHIBIT E)

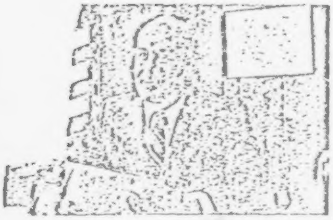
Employee Plans UPDATE
Exempt Organization

Prepared especially for practitioners by the IRS districts of

SAN FRANCISCO • RENO • SALT LAKE CITY

1978-3 JULY 1978

MEET THE NEW DISTRICT DIRECTOR



As the recently appointed District Director of the San Francisco District I would like to express my concern and commitment to the problems and questions practitioners may have in the area of Employee Plans and Exempt Organizations.

Through the periodic publication of the Employee Plans/Exempt Organization Update newsletter we hope to disseminate the most current and pertinent information and changes in the EP/EO area to you, the practitioner, as soon as possible.

In the past the newsletter has reported on the expeditious handling of EP and EO applications, current changes in filing requirements, latest regulations published, new IRS forms, as well as the District office's position on several EP/EO issues. We will expect to continue to provide such information periodically throughout the year.

If you have any questions, feel free to contact the District Office. We will also appreciate any comments you may have regarding the EP/EO newsletter.

Sincerely,

Michael

District Director

THE NON-TRADITIONAL CHURCH

Churches in this country have historically occupied a privileged status by being exempt from Federal State and local taxes. Unlike other charitable organizations, churches are not required to apply for tax exempt recognition nor are they subject to the annual filing requirements. Contributions to the churches are deductible at higher limits for charitable contribution purposes.

Recently, there have been a few instances of organizations claiming to be churches when in fact they are not. These non-traditional churches, or mail order ministry type operations are organized essentially to avoid income taxes. When these organizations are identified this district pursues active enforcement action.

Examination of these non-traditional churches require the Service to make the difficult decision involving the definition of "church" and "religion." The Internal Revenue Code does not define "church" nor does Congress provide IRS with any guidance in this sensitive area. The Courts have generally avoided the issue. However, in De La Salle Institute vs. US, 195 F. Supp. 891, and Chapman vs. Commissioner, 48 TC 350 (1967) the Court stated that Congress intended to leave the definition of "church" to the common meaning of the word, and more in the sense of a denomination or sect than in a generic or universal sense.

IRS has been examining organizations claiming to be churches whose characters and activities are not inherently religious. Many of these examinations, conducted within the audit constraints imposed by Section 7605(c) IRC, have resulted in denial of the organization's tax exempt status. In accordance, the tax benefits sought by the organizers were also denied. The Courts have also been supportive of

(EXHIBIT F)

Anchorage Daily News Wednesday, September 5, 1979 **C-1**

Taxman vows to search after false returns

By BILL WILSON
Daily News reporter

They may be preachers, but the taxman says theirs are false profits.

Verily, the Internal Revenue Service figures to do something about enrichments that cometh not from the sweat of the brow but from mail-order clergy warehouses and promises of a lifetime shorn of tax forms.

The Alaska Department of Revenue's Intelligence Services branch also is gearing up to stem the feared tide of fraudulent tax forms generated by an advertising campaign by the Universal Life Church. They are loaded for bear, according to Frank Berria, IRS Alaska district director, and Gil Hjellen of the Alaska Department of Revenue.

"It's serious. It's very serious," said Hjellen. "The withholding system is probablv the backbone of the country as far as taxes are concerned."

Both officials stress they can pursue criminal charges against "drugstore parsons" attempting to dodge tax bills by claiming exemptions on the grounds theirs are holy rather than terrestrial endeavors.

When asked if the state will automatically examine any Universal Life Church claims next spring, Hjellen replied, "You bet we are."

Berria and Hjellen are concerned with recent advertising in Anchorage newspapers by the Universal Life Church. "As with any church, a ULC chartered church does not file tax returns with the state or federal government," read the ads. "Why did you come to Alaska?"

You might not have come to pay taxes, but the two paths generally taken by devout tax evader both are full of holes, says Berria.

One of the ruses is to assign individual income to the church; the other to deduct one-half of one's income as a church donation in exchange for "free" housing and transportation.

"It's pretty well set in law," said Berria. "The law is being manipulated in such a way as it benefits the individual."

The revenue officials said they did not know how many pious practitioners plan to cut their overhead. But "because the ads are coming pretty strong now," they said they wanted to let people know the straight and narrow path is the only safe route to a happy April 15.

The Universal Life Church could not be reached for comment.

Berria and Hjellen said they are non-denominational and will keep a sharp eye out for violators of any sect.

Hjellen and company could have it worse. A tricky legal situation, for instance, is developing in Hardenburg, N.Y., where all 200 residents signed up with the Universal Life Church and are succussfully avoiding state property taxes. At least for now.

(EXHIBIT G)

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

BISHOP JOSE VALIENTE,
Complainant,
v
NATIONAL BANK OF ALASKA,
Respondent.

Docket No. C-80-0213-041-P

INVESTIGATOR'S FINDINGS

Under the authority of A.S. 18.80.010 through A.S. 18.80. 300, the Alaska State Commission for Human Rights, hereinafter the Commission, issues the following determination as to the merits of the subject charge.

Respondent is a public accomodation within the meaning of A.S. 18.80. 230(1) and A.S. 18.80.300(7) and is doing business in the State of Alaska.

The complaint was timely filed in accordance with the Commission's rules as outlined in 6 AAC 30.010(f) and all other jurisdictional requirements have been met.

Complainant, the Bishop of the Universal Life Church (ULC), alleges that he and other members of the ULC have been denied services, advantages and privileges by the Respondent due to their religion. The checking and savings accounts of the different congregations of ULC were closed by Respondent and applications of other pastors of the church, including Complainant, to open a savings and checking accounts were refused.

Respondent denies Complainant's allegations of religion discrimination, stating that Complainant's account was not accepted for economic reasons. Respondent states that it closed the account of other ULC charters because the cost of serving those accounts had become very expensive to the Respondent in terms of money and loss of person hours due to researching of the subpoena requests made by Internal Revenue Service.

According to the principles, of discrimination law, Complainant must first establish a set of facts which raise an inference of religion discrimination before Respondent can be required to justify its actions. Complainant can do this by showing not only that he belonged to Universal Life Church but also that he was denied privileges, services and advantages offered by the Respondent. The evidence would also have to show that Respondent either applied standards, procedures or policies to him differently than it did to similiarly situated non-members of the Universal Life Church or that Respondent's policies were administered in a manner which had an adverse impact on Universal Life Church Members.

Complainant has alleged that he and other similarly situated Universal Life Church members had been unlawfully denied service, advantages and/or privileges by Respondent due to their religion. Respondent stated that the members of Universal Life Church's were denied services, advantages and privileges of Respondent for economic reasons. The evidence showed that Respondent had expended considerable amount of dollars and person hours with Universal Life Church accounts that were being audited by IRS. The evidence further indicates that IRS plans to audit and investigate more of Universal Life Churches. Universal Life Church accounts were not the only acccounts closed by Respondent for economic reasons. A nationally known company's accounts were closed by Respondent because the accounts were unprofitable.

Therefore, I determine from the evidence disclosed during this investigation that there is no probable cause to believe that a violation of the Alaska Human Rights Law A.S. 18.80.230(1) has occurred.

I recommend the acceptance of these findings.

Grace A. Cross

Grace A. Cross
Investigator

7/14/80
Date

On behalf of the Commission, I approve these findings.

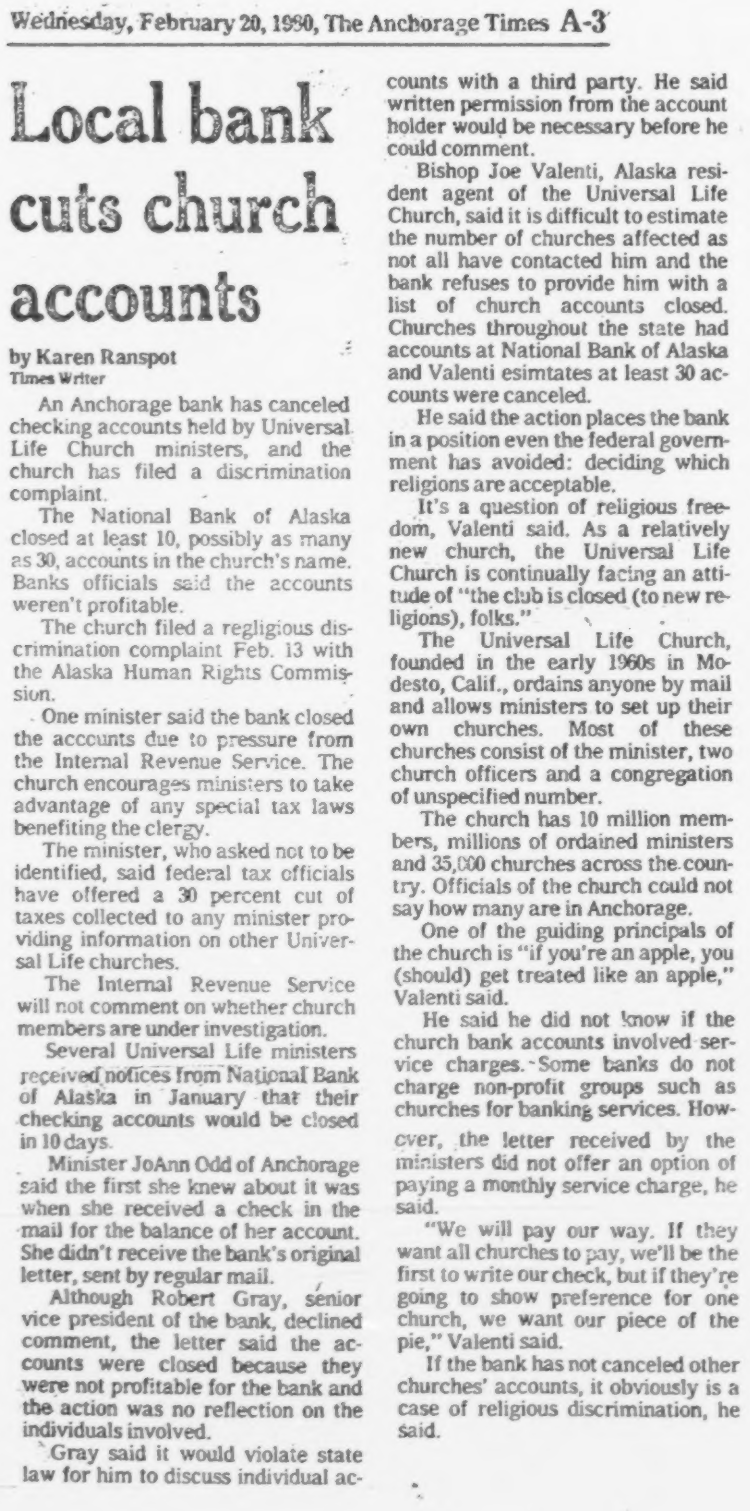
Having determined that there is no probable cause to believe that the charge is true, the Commission, shall issue an order closing the case.

Zella Boseman

Zella Boseman
Assistant Director
Southcentral Region

July 17, 1980
Date

(EXHIBIT H)



Wednesday, February 20, 1980, The Anchorage Times A-3

Local bank cuts church accounts

by Karen Ranspot
Times Writer

An Anchorage bank has canceled checking accounts held by Universal Life Church ministers, and the church has filed a discrimination complaint.

The National Bank of Alaska closed at least 10, possibly as many as 30, accounts in the church's name. Banks officials said the accounts weren't profitable.

The church filed a regligious discrimination complaint Feb. 13 with the Alaska Human Rights Commission.

One minister said the bank closed the accounts due to pressure from the Internal Revenue Service. The church encourages ministers to take advantage of any special tax laws benefiting the clergy.

The minister, who asked not to be identified, said federal tax officials have offered a 30 percent cut of taxes collected to any minister providing information on other Universal Life churches.

The Internal Revenue Service will not comment on whether church members are under investigation.

Several Universal Life ministers received notices from National Bank of Alaska in January that their checking accounts would be closed in 10 days.

Minister JoAnn Odd of Anchorage said the first she knew about it was when she received a check in the mail for the balance of her account. She didn't receive the bank's original letter, sent by regular mail.

Although Robert Gray, senior vice president of the bank, declined comment, the letter said the accounts were closed because they were not profitable for the bank and the action was no reflection on the individuals involved.

Gray said it would violate state law for him to discuss individual accounts with a third party. He said written permission from the account holder would be necessary before he could comment.

Bishop Joe Valenti, Alaska resident agent of the Universal Life Church, said it is difficult to estimate the number of churches affected as not all have contacted him and the bank refuses to provide him with a list of church accounts closed. Churches throughout the state had accounts at National Bank of Alaska and Valenti esimtates at least 30 accounts were canceled.

He said the action places the bank in a position even the federal government has avoided: deciding which religions are acceptable.

It's a question of religious freedom, Valenti said. As a relatively new church, the Universal Life Church is continually facing an attitude of "the club is closed (to new religions), folks."

The Universal Life Church, founded in the early 1960s in Modesto, Calif., ordains anyone by mail and allows ministers to set up their own churches. Most of these churches consist of the minister, two church officers and a congregation of unspecified number.

The church has 10 million members, millions of ordained ministers and 35,000 churches across the country. Officials of the church could not say how many are in Anchorage.

One of the guiding principals of the church is "if you're an apple, you (should) get treated like an apple," Valenti said.

He said he did not know if the church bank accounts involved service charges. Some banks do not charge non-profit groups such as churches for banking services. However, the letter received by the ministers did not offer an option of paying a monthly service charge, he said.

"We will pay our way. If they want all churches to pay, we'll be the first to write our check, but if they're going to show preference for one church, we want our piece of the pie," Valenti said.

If the bank has not canceled other churches' accounts, it obviously is a case of religious discrimination, he said.

(EXHIBIT I)

Church group plans growth in state

by Karen Ranspot
Times Writer

Universal Life Church meetings have been held in homes in the past. But Bishop Joe Valiente of Anchorage says by the end of the year there may be as many as 10 church buildings throughout the state.

The first of the Alaska Universal Life Churches opened at the corner of Arctic Boulevard and Tudor Road three weeks ago. One has opened in Fairbanks and there are plans for more in Anchorage and in other parts of the state.

The building is leased by the church — Valiente said the church does not believe in building great monuments. It is a church because of what is going on in the building, not because it was designed to be a church, he said.

Universal Life Church services are held every Tuesday at 7 p.m. Valiente said the non-denominational services are open to the public, and visitors are welcome. "And we don't pass a collection plate."

Founded in the 1960s by Bishop Kirby Hensley, the California-based mail-order ministry has grown to 11 million members, with 10,000 in Alaska, Valiente said in an interview Tuesday. He thinks the Universal Life Church is the wave of the future.

The church's basic philosphy is that no individual or group should enjoy special privileges. In the 1960s young men sent for their ordination papers in order to avoid the draft. In the 1970s and 1980s, the ranks of the clergy grew as taxpayers learned there are tax advantages to being a "man of the cloth."

But Valiente said the church has more to offer than lower taxes. It has a dogma that stresses the importance of the individual over the church.

Valiente said former President John Kennedy did the country a great disservice when he asked Americans to "ask not what my country can do for me but what I can do for my country." That philosphy placed the country above the individual, and Valiente thinks too many religions place the church above people.

"Man has the ability to dream and the ability to have a heaven here on earth," Valiente said.

The Moral Majority is one sign the people are beginning to realize they can not sit back and wait for the heaven in the afterlife. "They finally realized they have to be doers. They are doing nothing more than trying to establish their kingdom of heaven on earth."

Jesus was the son of God, just as every person is the son of God, Valiente said. The Universal Life Church believes that there are several planes of consciousness. "Jesus started out as the son of man."

As Jesus progressed up the planes of the consciousness, he began calling himself the son of God and finally God himself, Valiente said.

While no one else has ever been able to progress along these planes as far as Jesus, Valiente said it is important to try. Each individual carries God within him, he said, and it is his responsibility to find and develop a God consciousness that will allow him to understand the mysteries.

(EXHIBIT J)

G10 Anchorage Daily News Saturday, February 14, 1981

Universal Life Church gets new parish home here

By SARAH MOTT
Daily News reporter

Bishop Joe Valiente strides into the chapel.

"We can sit in here," he says with a broad grin, motioning towards the pews. "Nothing to feel strange about. Nobody here with any crown of thorns or anything."

"Here" is the Universal Life Church. Once alleged by the Internal Revenue Service to be nothing more than a tax dodge and most widely known for its mail-order clergy service during the Viet Nam war, the church is steadily advancing into respectability with its first "parish" on Arctic Boulevard near Tudor Road.

Valiente is the church's resident agent for the state. That also means he's the preacher.

"You and I are the greatest things in the world," booms the former truck driver. "We're the workers and the doers. You and I are partakers of the Divine Nature.

"Spiritual man is sitting right here, you know. You don't have to die to get to it."

Church members don't pay dues and they don't give up sin or vice. No vows of repentence, no looking toward the kingdom beyond.

The chapel is white and smells of new paint. A gold curtain hides icons that still hang in the back, vestiges of its former incarnation as an orthodox church. Like Valiente says, there are no crosses, no Christs and no scenes from the New Testament.

"For 30 years, I was dominated by other religions," explains the former Catholic and excommunicated Mormon. "I came to realize *I* was the source.

"The worst thing that ever happened to this country is when Kennedy gave his speech saying 'ask not what your country can do for you, but what you can do for your country,' " he says. "He inverted something there. He made the country more important than people. Here at this church, we're not asking people to give us anything.

"We wanna do something for you."

Since there really is no membership in the church, it's hard to tell how much of a flock Valiente watches over. He estimates somewhere near 10,000. At the weekly Tuesday meetings, he claims some 85 people show up.

"It's hard to tell," he admits. "Folks in the Universal Life Church don't usually show up in other groups. They just can't fit in. Organizations are too restrictive."

Nothing on this earth is not created by man, he says. And God ceases to be when man stops creating. So, it's time for folks to sit up and realize nothing's going to get better until humans make it better.

"When I was young ... you've got to understand this ... When I was young, now God, he was the vengeful kind. Real vengeful. Hooooo boy, he was a mean motor scoooter and a bad go-getter, if you know what I mean," he says.

"Well, God's changed 'cause people have changed."

"This earth will never be peaceful unless we awaken and do something about it," he continues. "The Moral Majority is nothing more than people who've been praying and asking for the kingdom of heaven, getting off their knees and doing it. They're implementing their kingdom of God. We all just got to get off our butts and do it."

As for the church's past problems with the Internal Revenue Service and implications that it is nothing more than a draftdodger's heaven, Valiente has some pretty cogent opinions.

"We represent freedom for the individual," he begins. "The church today offers a dream world, but you have to die to get it. The government wants to dominate you and me just like the church does. We pose a threat to both of them — the church and the state."

As far as he's concerned, the 11 million ministers — more clergy than all other religions have in total — are something to reckon with.

As for draft evasion, he says, "You know, we didn't do anything any different than everyone else was doing. People were getting married, going to school and shooting off their toes not to go to war."

And he bristles at the idea that there is any relationship between the church's expansion and resumption of draft registration.

"As long as we do that which is right we're ok. If they don't want us to be exempt, they better write a new law.

"But they won't get it passed," he adds with a chuckle. "Cuz the church runs things."

As far as Valiente is concerned, the church system always has and continues to rule the world.

"No fooling, you didn't know that? Why, you know who Reagan talked to his second day in office," he asks with a grin. "Jerry Falwell (leader of the Moral Majority). Of course he had to talk to him on the phone. He has to get his instructions don't he?

The key word in the work of the Universal Life church, according to Valiente, is freedom. In the sixties — when the church was founded — we planted the seeds of freedom, he says. In the seventies, we cultivated. In the eighties, freedom will be harvested throughout the world.

(EXHIBIT K)

Anchorage Daily News Saturday, March 7, 1981

IRS cracking down on church deductions

By SARAH MOTT
Daily News reporter

If it looks too good to be true, it probably is.

That's the pearl of wisdom Internal Revenue Service agent Terry Zeznock offers to all those folks wondering if mail-order churches are the biggest tax break this side of Libertarian pipedreams.

Zeznock, the IRS district coordinator for non-traditional churches in the Anchorage area, knows whereof he speaks. His job for the last eight months has been investigating individuals who file taxes and use churches as a shelter — an illegal tax shelter.

Under federal law, individuals may deduct donations of up to half of their income to an exempted church of their choice, thereby cutting income by 50 percent and slashing taxes. And it encourages donations to churches.

The catch is that people abuse it.

The misuse usually pops up in "alternative" churches, whether spawned as an attempt to avoid military service or an individual's scheme to make some money in the name of a savior. Nationwide, those cases are going to court. And organizations like the Bubbling Well Church of Universal Love, Basic Bible Church, Foundation for Divine Meditation and Western Catholic Church aren't being given tax exemptions as religious institutions.

Most of the abuses run the same course. Individuals obtaining mail-order minister's licenses and start their own charters. They then give 50 percent of their income to that charter. That money, in turn, goes right back into supporting them as ministers while they only pay taxes on the half of the income which did not go to the church. It's not a bad racket — except it's illegal.

"We can't question the validity of churches," says Zeznock. "But we can question whether the contributions are going for the purposes of the church or straight back into contributors' pockets."

It's the idea of substance versus form, he explains. The IRS has to find out if people claiming to support the church are simply funneling money through it to receive economic gain or if the contribution is a bonafide gesture.

'We can't question the validity of churches, but we can question whether the contributions are going for the purposes of the church or straight back into contributors' pockets.'
IRS agent Terry Zeznock

"Say you give the Church of the Rising Sun your money," Zeznock cites as an imaginary example. "You give them half your income and write off 50 percent on your taxes. Now, that's all well and good, if you don't get any personal benefit from the contribution.

"But what if they're paying your house payments, or writing off your car expenses for you. That's illegal."

Zozneck admits that a church in the Bush, organized by a minister who must also work and supported by a small congregation, could conceivably be called into question. But the presence of other donors in addition to the minister, as well as a proven commitment to the church as a religious body, would allay any suspicions of personal gain. He also says the situations his department investigates are clearcut schemes in which someone is very obviously out to make a buck.

The blemish isn't on any particular church — or the fact that they are alternatives to standard religions. Instead, government scrutiny focuses on the misuse of individual mail-order charters.

In some cases, an institution's mother church is designated tax-exempt, but its charters are not.

In the Universal Life Church, for instance, the mother church in Modesto, Calif., has been designated tax-exempt, but its charters must be evaluated on an individual basis. In some instances Outside, those charters have not been granted tax-exempt status upon review.

According to Bishop Joe Valiente, the resident agent for the Anchorage charter of the Universal Life Church, the mother church has filed a $10 million suit against the government for its refusal to grant the tax-exempt status, claiming it is undue harassment which has cost the church revenues.

Anchorage's Universal Life charter, with a new building on Arctic Boulevard, has not received tax-exempt status.

"It's like telling people the pope has to preach in Rome and can't preach here," says Valiente. "The IRS is trying to say the Universal Life Church can't do work here. They say, 'yeah, we recognize it, but we'll tell you how to excercise that right.' The church and state are having a hell of a fight here."

"We are the Universal Life Church and we've filed as an Alaska non-profit business," Valiente says. "We're not doing anything any different than anyone else and we should have the right.

"I'll grant them one thing. Each congregation must be organized for religious purposes. That's why we have the mother church, to check on that.

"The only worry I have about this tax exempt issue is if the courts don't live with the first amendment. We don't have any trouble with the IRS ... but when you talk traditional and non-traditional churches, you're making an unconstitutional assumption there."

Churches are under no obligation to apply for exempt status, Zozneck says. However, it is the responsibility of people using them as a tax write-off to know if they have received tax-exempt status.

IRS public relations woman Marilyn Steen said, individuals donating half their income to the Universal Life chapter here "can probably be expected to be audited somewhere down the road."

In Alaska, most of the investigations into misuse of church status have been on a catch-as-catch-can basis. The IRS is now actively pursuing them though and, Zozneck says, may have criminal charges to bring against individuals by June of 1982.

He currently is plowing through a number of returns dating back to 1977 and is also receiving tips from folks not so pleased that Aunt Sue or the guy next door aren't paying taxes because they're misusing a religious exemption.

'It's like telling people the pope has to preach in Rome and can't preach here. The IRS is trying to say the Universal Life Church can't do work here. They say, 'yeah, we recognize it, but we'll tell you how to excercise that right.'
Universal Life Church resident agent Joe Valiente

For investigative purposes, the IRS may audit tax returns from three years ago to the present. If fraud is found, returns can be audited up to seven years back.

Zozneck's biggest concern is that some people naively believe mail-order ministries are automatically viable, tax-deductible institutions.

It's particularly seductive for people who have just received a substantial increase in income and are allowed few deductions to even it out.

They're the ones, Zozneck says, who snatch at straws and want to believe it's legitimate.

But naivete doesn't count in court. The burden of proving tax-exempt status is on the individual — and that burden can be heavy, even if you have all the best intentions.

All invalid deductions — including those for non-exempt churches — bring a 12 percent interest rate on the unpaid taxes and a substantial monthly penalty. That is in addition to the automatic tax on the amount of contribututions formerly claimed as deductible.

As Zozneck puts it, it's not a worthwhile gamble.

He does say that contributions given in good faith will probably not be liable for criminal fraud, however, the deduction would certainly be disallowed.

(EXHIBIT L)

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Jose & Bobby Valiente
1106 Southhampton
Anchorage, AK 99503

Person to Contact: Terence Zeznock

Telephone Number: 271-4265

Refer Reply to: E:1 Zeznock

Date: June 23, 1981

Mr. & Mrs. Valiente:

A determination on the deductibility of your contributions for 1978 and 1979 has not been made. Upon receipt of your summonsed banking records I will make a determination. At that time you will receive a Audit Report and Explanation for any adjustments that are made. Please contact me at the above number, if you have any further questions.

Sincerely,

Terence Zeznock
Internal Revenue Agent

(EXHIBIT M)

Internal Revenue Service
memorandum

date: 3/18/81

to: FILE

from: Terence Zeznock, Revenue Agent

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subject: Tax Liability of Jose Valiente and Bobby J. Valiente

The examination of Jose and Bobby J. Valiente's 1978 and 1979 1040s was started 12/80 by the Anchorage District.

T.P. was contacted 12-23-80 and an appointment was set for 1-9-81.

On 1-9-81 the T.P's representative, John Burns was present for the appointment, but the T.P.'s were not. Mr. Burns stated the T.P.'s only wanted to be audited for one year at the time. The representative presented documentation for the 1978 1040, but would not for the 1979 1040. Representative stated T.P. would not supply information until 1978 audit was complete.

On January 30, 1981 T.P.'s bank records were summonsed for The First National Bank of Anchorage. The T.P's stayed compliance 2-12-81. At that time the T.P. stated he wished to make another appointment.

The T.P's representative was contacted and another appointment was made for February 24, 1981.

February 24, 1981 the T.P.'s and their representative appeared for the appointment. The T.P.'s wife took short-hand notes of the meeting.

An issue arose over documentation presented to support $14,147.50 of contributions. The documentation was a letter from U.L.C. Modesto stating the T.P. had contributed $13,097.50 and a receipt from U.L.C. charter #30533 for $50.

The T.P. would not respond to the following questions.

1. Did the contributions you made go directly to the U.L.C. Modesto or did they go to a charter church in Alaska?

2. Did you receive any benefit from these contributions such as a housing allowance?

3. What is the general area over which you preside, as a Bishop in the U.L.C.?

4. What is the name of your charter church of the U.L.C.?

The T.P. was told the statements would have to be supported by cancelled checks before they could be accepted.

The T.P. refused to supply the cancelled checks.

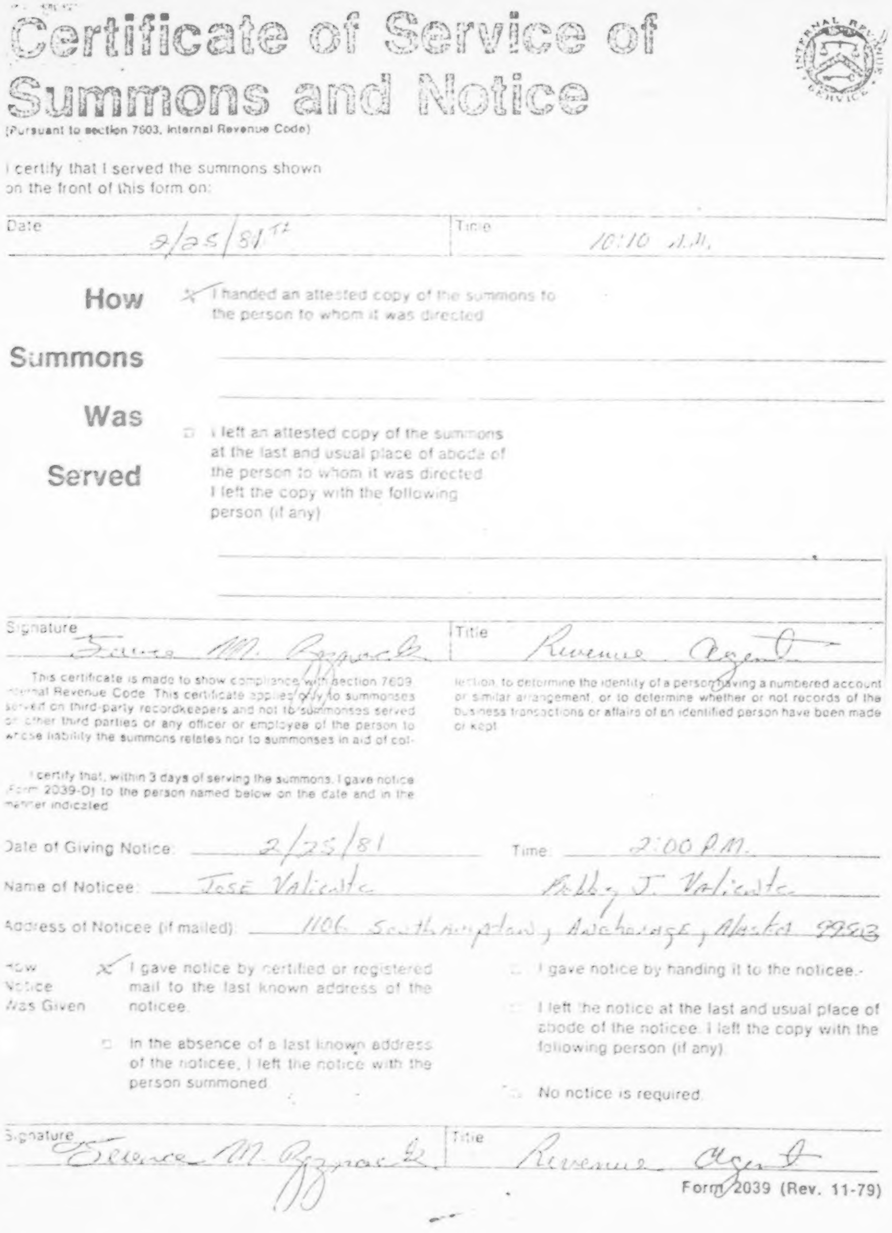
On 2-25-81 a summons was issued to a newly found account at National Bank of Alaska.

The T.P. stayed compliance of the National Bank of Alaska, summons on March 10, 1981.

Enforcement on the National Bank of Anchorage, summons was requested 3-2-81.

No records have been received as of this date.

(EXHIBIT N)



Certificate of Service of Summons and Notice

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date 2/25/81 TF	Time 10:10 A.M.

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed

☐ I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any)

Signature	Title Revenue Agent

This certificate is made to show compliance with section 7609, Internal Revenue Code. This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Form 2039-D) to the person named below on the date and in the manner indicated.

Date of Giving Notice: 2/25/81 Time: 2:00 P.M.

Name of Noticee: Jose Valiente Bobby J. Valiente

Address of Noticee (if mailed): 1106 Southampton, Anchorage, Alaska 99503

How Notice Was Given

☒ I gave notice by certified or registered mail to the last known address of the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.

☐ I gave notice by handing it to the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐ No notice is required.

Signature	Title Revenue Agent

Form 2039 (Rev. 11-79)

Administrative Summons Control Form

Report Symbol: NO PR

I – BASIC INFORMATION

1. File Number (a) - (b) - (c) - (d)
9 2 1 11 8 1 / 0 8 8

2. Issued by (Name of Officer and extension)
TERENCE ZEZNOCK 271-4269

Type of summons (Section of the Code) (At least one box must be checked)

3. ☒ 7609(a) – Third Party 4. ☐ 7609(f) – John Doe 5. ☐ 7609(g) – Court Approved 6. ☐ Not 7609

7. Number of notices issued 2

8. Number of cases affected 2

9. Number of noticees staying compliance (To be completed after the time period for staying compliance has expired) ☐

10. Category of summonsed party (Check appropriate box)

1. ☐ Individual taxpayer
2. ☐ Organization taxpayer
3. ☒ Financial organization
4. ☐ Attorney
5. ☐ Accountant
6. ☐ Consumer reporting agency
7. ☐ Credit card issuer
8. ☐ Broker
9. ☐ Other

Program Information

Criminal Investigation Only

11. Program Code ☐

12. National Project Number (if applicable) ☐

Collection, EP/EO and Examination Divisions Only (One box must be checked)

13. ☐ Strike Force 15. ☒ Illegal Tax Protester 17. ☐ None of These
14. ☐ Drug Trafficker 16. ☐ Racketeer

Reason(s) For Not Seeking Enforcement Of Summons Not Initially Complied With (By Division) Or Declining Request For Enforcement (By Counsel)

18. ☐ Division decision 19. ☐ Counsel/DJ/USA decision

Enter 2-Digit Code(s) That Apply(s) (See Below) (If 18 or 19 are checked, Code(s) must be entered)

20. ☐ 21. ☐

CODE

01 – Stay Withdrawn and Recordkeeper Complied
02 – Previously Withheld Records Provided by Summonsed Party
03 – Previously Withheld Records Provided by Another Source
04 – Legally Insufficient Notice
05 – Tax Liability Satisfied
06 – Case Closed
07 – Incorrect or No Dates in Caption
08 – Insufficient Service of Summons
09 – Summoned Information Not Relevant
10 – Information No Longer Needed
11 – Taxpayer Asserts 5th Amendment (Counsel Only)
12 – Witness Asserts 5th Amendment (Counsel Only)
13 – Other

II – LOG

Enter the required information as events occur. Use only words and abbreviations provided in the instructions

22. Action	23. Date MMDDYY	24. From	To	22. Action	23. Date MMDDYY	24. From	To
Served	022581						
Stayed	031081						
Referred	031881	EX	DC				

(EXHIBIT 0)

mendment.—Sec. 7603 appears above as by Sec. 505(c)(5) of Public Law 95-599, 1978, effective (Sec. 505(d) of P.L. 95-599) 979.

amendment.—Sec. 7603 was previously by the following

)(c)(6) of Public Law 94-530, Oct. 17, 1976, (Sec. [1](d) of P.L. 94-530) Oct. 1, 1976.*

07(d)(9) *of Public Law 91-258, May 21, 1970,* effective (Sec. 211(a) of P.L. 91-258) July 1, 1970.*

Sec. 202(c)(4) of Public Law 89-44, June 21, 1965, effective (Sec. 701(a)(2), (3) of P.L. 89-44) Jan. 1, 1966.*

Sec. 208(d)(4) of Public Law 627, June 29, 1956, effective (Sec. 211 of P.L. 627) June 29, 1956.*

*Sec. 4(i) of Public Law 466, Apr. 2, 1956.**

503 as so amended is in P-H Cumulative Changes.

604. ENFORCEMENT OF SUMMONS.

Jurisdiction of District Court.—If any person is summoned under the internal laws to appear, to testify, or to produce books, papers, records, or other data, ited States district court for the district in which such person resides or is found ave jurisdiction by appropriate process to compel such attendance, testimony, or tion of books, papers, records, or other data.

Enforcement.—Whenever any person summoned under section 6420(e)(2), (2), 6424(d)(2), 6427(g)(2), or 7602 neglects or refuses to obey such summons, or luce books, papers, records, or other data, or to give testimony, as required, the ry may apply to the judge of the district court or to a United States commissioner district within which the person so summoned resides or is found for an attachgainst him as for a contempt. It shall be the duty of the judge or commissioner to ie application, and, if satisfactory proof is made, to issue an attachment, directed e proper officer, for the arrest of such person, and upon his being brought before proceed to a hearing of the case; and upon such hearing the judge or the United commissioner shall have power to make such order as he shall deem proper, not stent with the law for the punishment of contempts, to enforce obedience to the ments of the summons and to punish such person for his default or disobedience.

mendment.—Sec. 7604(b) appears above as d by Sec. 505(c)(5) of Public Law 95-599, 1978, effective (Sec. 505(d) of P.L. 95-599) 1979.

amendments.—Sec. 7604(b) was previ- nended by the following:

1)(c)(6) of Public Law 94-530, Oct. 17, 1976, (Sec. [1](d) of P.L. 94-530) Oct. 1, 1976.*

207(d)(9) *of Public Law 91-258, May 21, 1970,* effective (Sec. 211(a) of P.L. 91-258) July 1, 1970.*

Sec. 202(c)(4) of Public Law 89-44, June 21, 1965, effective (Sec. 701(a)(2), (3) of P.L. 89-44) July 1, 1966.*

Sec. 280(d)(4) of Public Law 627, June 29, 1956, effective (Sec. 211 of P.L. 627) June 29, 1956.*

*Sec. 4(i) of Public Law 466, Apr. 2, 1956.**

7604 as so amended is in P-H Cumulative Changes.

Cross References.—

1) Authority to issue orders, processes, and judgments.—

or authority of district courts generally to enforce the provisions of this title, see tion 7402.

2) Penalties.—

or penalties applicable to violation of section 6420(e)(2), 6421(f)(2), 6424(d)(2), 7(g)(2), or 7602, see section 7210.

amendment.—Sec. 7604(c) appears above as d by Sec. 505(c)(6) of Public Law 95-599, 1978, effective (Sec. 505(d) of P.L. 95-599) 1979.

r amendment.—Sec. 7604(c) was proviously d by the following:

207(d)(9) of Public Law 91-258, May 21, ffective (Sec. 11(a) of P.L. 91-258) July 1, 1970.*

Sec. 202(c)(4) of Public Law 89-44, June 21, 1965, effective (Sec. 701(a)(2), (3) of P.L. 89-44) Jan. 1, 1966.*

*Sec. 4(i) of Public Law 466, Apr. 2, 1956.**

Sec. 208(d)(4) of Public Law 627, June 29, 1956, effective (Sec. 211 of P.L. 627) June 29, 1956.*

7604(c) as so amended is in P-H Cumulative Changes.

7605. TIME AND PLACE OF EXAMINATION.

Time and Place.—The time and place of examination pursuant to the provisions [illegible] 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602 shall be such time and [illegible] fixed by the Secretary and as are reasonable under the circumstances. In [illegible] under authority of paragraph (2) of section 7602, or under the [illegible] 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(g)(2) the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

Last amendment.—Sec. 7605(a) appears above as amended by Sec. 505(c)(5) of Public Law 95-599, Nov. 6, 1978, effective (Sec. 505(d) of P.L. 95-599) Jan. 1, 1979.

Prior amendments.—Sec. 7605(a) was previously amended by the following:

Sec. [1](c)(6) of Public Law 94-530, Oct. 17, 1976, effective (Sec. [1](d) of P.L. 94-530) Oct. 1, 1976.*

Sec. 207(d)(9) of Public Law 91-258, May 21, 1970, effective (Sec. 211(a) of P.L. 91-258) July 1, 1970.*

Sec. 202(c)(4) of Public Law 89-44, June 21, 1965, effective (Sec. 701(a)(2), (3) of P.L. 89-44) Jan. 1, 1966.*

Sec. 208(d)(4) of Public Law 627, June 29, 1956, effective (Sec. 211 of P.L. 627) June 29, 1956.*

*Sec. 4(i) of Public Law 466, Apr. 2, 1956.**

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*Sec. 7605(a) as so amended is in P-H Cumulative Changes.

(b) Restrictions on Examination of Taxpayer.—No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) Restriction on Examination of Churches.—No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in the carrying on of an unrelated trade or business or may be otherwise engaged in activities which may be subject to tax under part III or subchapter F of chapter 1 of this title (sec. 511 and following, relating to taxation of business income of exempt organizations) unless the Secretary (such officer being no lower than a principal internal revenue officer for an internal revenue region) believes that such organization may be so engaged and so notifies the organization in advance of the examination. No examination of the religious activities of such an organization shall be made except to the extent necessary to determine whether such organization is a church or a convention or association of churches, and no examination of the books of account of such an organization shall be made other than to the extent necessary to determine the amount of tax imposed by this title.

Addition.—Sec. 7605(c) was added by Sec. 121(f) of Public Law 91-172, Dec. 30, 1969, effective (Sec. 121(g) of P.L. 91-172) with respect to taxable years beginning after Dec. 31, 1969.

SEC. 7606. ENTRY OF PREMISES FOR EXAMINATION OF TAXABLE OBJECTS.

(a) Entry During Day.—The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at Night.—When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.

(c) Penalties.—

For penalty for refusal to permit entry or examination, see section 7342.

SEC. 7607. ADDITIONAL AUTHORITY FOR BUREAU OF CUSTOMS.

Officers of the customs (as defined in section 401(1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(1)), may—

(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States, and

(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

Last amendment.—Sec. 7607 appears above as amended by Sec. 1102(g)(1) of Public Law 91-513, Oct. 27, 1970, effective (Sec. 1105 of P.L. 91-513) May 1, 1971.

Addition.—Sec. 7607 was added by Sec. 104(a) of Public Law 728, July 18, 1956, effective (Sec. 401 of P.L. 728) July 19, 1956.

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(EXHIBIT P)

Non-Traditional Churches: Court Decisions

In recent years, there have been a number of court proceedings involving the exemption of non-traditional churches from income tax and the deductibility of contributions to such organizations. The cases have generally focused on a few major elements:

I. Qualification under Code §501(c)(3)

Even though a church is not required to apply for exemption to obtain exempt status, an inquiry may be made to determine whether or not an organization calling itself a church is qualified under Code §501(c)(3). "The receiving of an exemption is a matter of legislative grace and not a constitutional right." Parker v. Commissioner, 365 F.2d 792 (8th Cir. 1966). A mere allegation by the organization that it is a church is not dispositive of the issue. Passiac United Hebrew Burial Association v. United States, 216 F. Supp. 500 (D.N.J. 1963). See also, Bronner v. Commissioner, 72 T.C. 368 (1978); United States v. Pusch, 79-2 U.S.T.C. 9663 (5th Cir. 1979); United States v. Miller, 79-2 U.S.T.C. 9665 (8th Cir. 1979), aff'g 79-2 U.S.T.C. 9467 (D. Minn. 1979). A summons to the pastor of a church seeking records in connection with the investigation of the church's tax-exempt status was ordered to be enforced by the District Court in United States v. Freedom Church; the First Circuit upheld the ruling. 80-1 U.S.T.C. 9132 (1st Cir. 1980)

II. Exemption under the Universal Life Church-Modesto's (ULC-Modesto) exemption

The Universal Life Church Modesto was held to have exempt status by the District Court in Universal Life Church, Inc. v. United States, 372 F. Supp. 770 (E.D. Cal 1974). In that case, the government conceded that ULC-Modesto passed the "organization test" (i.e. that it was organized exclusively for religious purposes) but argued that (1) the issuance of Honorary Doctor of Divinity certificates was opposed to public policy as expressed in the California Educational Code and (2) that the ordination of ministers, granting of church charters, and issuance of Doctor of Divinity certificates were substantial activities which didn't further any religious purpose.

The court held that since the Honorary Doctor of Divinity was strictly a religious title with no academic standing, it didn't violate the California Educational Code. Without passing on the merits of religion, the Court ruled that the ordination of ministers, etc., were not substantial activities which did not further a religious purpose.

The ULC-Modesto, however, received an exemption only for itself and not a group exemption. Therefore, churches which receive charters from ULC-Modesto do not receive the benefits of this exemption and must qualify on their own. See United States v. Toy National Bank, (N.D. Iowa 1979).

III. Burden of Proof to Prove Qualification under Code §501(c)(3)

The burden of proof is on the church to show that it is organized and operated exclusively for religious purposes, therefore, whether it should be exempt from taxation under Code §501(c)(3). In Western Catholic Church, 73-19 PH-TC (1979), the church (no relation to the Roman Catholic Church), brought an action for declaratory judgment under Code §7428(a) after the IRS revoked its tax-exempt status. The church had been incorporated by S. Dean Slough and his wife and daughter. The articles of incorporation and by-laws provided that upon dissolution of the church the assets would be paid to an organization exempt under §501(c)(3).

The church neither conducted religious services nor performed religious functions on a group basis. Slough, the only minister, claimed that he did some individual counseling. Slough and his family received no compensation from the church. He contributed $97,930 to the church over a 3 year period. The church's primary activity was making passive investments in order to accumulate money for the building fund. It purchased two automobiles and sold them to Slough's corporations. It purchased an office building and leased it to one of Slough's corporations.

The Court held that there was no question that the church was organized for a religious purpose but that it did not carry on any activities to accomplish that purpose. The church bears the burden of proving that it is entitled to tax exempt status; objective evidence of the number of church members is relevant to an inquiry of activities of a church (but a small membership would not prevent it from obtaining exemption). In this case, the primary activity was fund raising and the likelihood that the funds would be used to build a building was remote. The church's needs were dictated at least in part by Slough's private interests; the money which he donated to the church and for which he claimed deductions never passed out of his control.

IV. Factors which will deny exemption under Code §501(c)(3)

1. Failure to be organized exclusively for a religious purpose (see Clippinger v. Commissioner, 37 TCM 454 (1978) and Walker v. Commissioner, 37 TCM 1851-15 (1978)), discussed below.

a. Foundation for Divine Meditation, Inc., 24 TCM 411 (1965), aff'd sub nom. Parker v. Commissioner, 365 F.2d 792 (8th Cir. 1966). The church was organized and operated for a substantial non-exempt purpose, namely publication and distribution by sale to the public of the founder's writings. Financial gain was the end to which the activities were directed.

A narrow purpose, however, is not necessarily fatal. General Conference of the Free Church v. Commissioner, 71 TC 920 (1979).

b. Failure to provide that upon dissolution, the assets will be distributed for an exempt purpose. General Conference of the Free Church v. Commissioner, (under state law, some assets could be distributed to members). Calvin K. of Oakknoll v. Commissioner, 79-1 U.S.T.C. 9328, aff'g 69 TC 770 (upon dissolution, assets were to revert to taxpayer).

2. Failure to be operated exclusively for a religious purpose. Western Catholic Church, above.

a. Activities which constitute more than an insubstantial non-exempt purpose.

The Church in Boston v. Commissioner, 71 TC 102 (1978). The church made grants to individuals, including officers of the church, without any criteria to determine eligibility. The grants were interest-free, with no legal obligation to repay. Court held that this grant activity was more than an insubstantial non-exempt activity.

b. Failure to actually engage primarily in activities which accomplish the exempt purpose.

Christian Manner International v. Commissioner, 71 TC 661 (1979). The promotion, distribution and sale of books written by the founder of the church was its primary activity. The Tax Court held that the [illegible] substantial non-exempt purpose would defeat the church's exemption and that even if there was no non-exempt purpose, the organization must actually engage primarily in activities which accomplish the exempt purpose(s). If more than an insubstantial part of the activities do not further such exempt purpose, the entity will not be exempt. The court recognized that there can be more than one purpose in conducting a single activity but held that here, the primary purpose was commercial in nature and for the private benefit of the founder.

c. Receipt of income from the sale of religious literature does not necessarily prevent the organization from being organized and operated exclusively for religious purposes. The profit-making activities, however, must further or accomplish an exempt purpose. St. Germain Foundation v. Commissioner, 26 TC 648 (1956); [illegible] v. Commissioner, 70 TC [illegible] (197[illegible]).

3. Inurement to individual members - [illegible] Ministries v. U.S., [illegible] AFTR 2d [illegible]; [illegible] v. United States, 45 AFTR 2d 80-570 (D. DC 1979).

4. Denial of exemption under code 501(c)(3) 1980 cases:

Bubbling Well Church of Universal Love, Inc., Tax Court, Dec. 36,999 (1980)
Record did not establish that no part of the church's net earnings inures to the benefit of private individuals. Exempt status denied.

Basic Bible Church Tax Court, Dec. 37,095 (1980)
Church not entitled to exemption - church serves private interests of founder and family.

Unitary Mission Church of Long Island Tax Court, Dec. 36,993 (1980)
Church is not entitled to exemption under 501(c)(3) because part of its earnings inure to benefit of the minister and his wife.

7. Allowance of Contributions under Code 170(c)(2).

Disallowance of Contributions to Church Cases

Hanson v. Commissioner, 40 TCM 97[illegible] (1980) TP, a minister in the Church of Eternal Hope of Springfield, Mass., deposited his salary into a church account [illegible] to pay his business and personal living expenses. He was not entitled to a charitable deduction. TP failed to show that there were contributions and that the church was an entity organized and operated for religious purposes.

Rooney v. Commissioner, 40 TCM [illegible] Tax Court rejected TP's contention that he did not have to substantiate charitable contributions. TP argued that requirement of proof was violation of his constitutional rights.

Oakknoll v. Commissioner, 79-1 USTC 9329 (2nd Cir. 1979) Deduction for contribution to charitable organization denied; benefit from contribution was to TP's, not organization (established by TP's).

Murch v. Commissioner, 39 TCM 836 (1979) Taxpayer not entitled to a charitable deduction for contributions to the Church of the Tolerants because the church was not organized and operated exclusively for religious purposes and taxpayer failed to prove that no part of the net earnings of the church inured to the benefit of a private individual.

The burden of proof is also on the taxpayer to prove that the church qualifies under Code 170(c)(2) and therefore that he is entitled to deduct contributions made to the church. The organization must be organized and operated exclusively for religious purposes and no part of its net earnings may inure to the benefit of any private individual.

In Clippinger v. Commissioner, 37 TCM 484 (1978), the taxpayer claimed deductions for contributions made to the church which he founded. It was not incorporated, was not affiliated with any existing religious organization, conducted no services. The Tax Court held: (1) The questions of whether taxpayer made an actual contribution to the church and whether the church meets the requirements of 170(c)(2) are factual ones, with respect to which the taxpayer has the burden of proof. (2) Taxpayer failed to meet his burden of proof. The only evidence of contribution was the testimony of taxpayer and his step-daughter and a receipt signed by taxpayer on behalf of the church. The taxpayer and step-daughter, however, were not credible witnesses. (3) "It is clear from the record that the principal, if not the sole purpose of petitioner's efforts, was to establish an organization which would enable him to indirectly convert personal expenditures into Federal income tax deductions which would inure exclusively to the personal benefit of himself and his wife." Therefore, the church didn't qualify under Code Sec. 170(c)(2), and the deductions were disallowed.

Similarly in Walker v. Commissioner, 37 TCM 1851-15 (1978), the taxpayer claimed a deduction for a contribution to Clippinger's church (see above). The only evidence of the claimed contribution was an undated receipt. The Court held: (1) Taxpayer's evidence with respect to whether contributions were actually made, and if so, the amounts thereof is unconvincing. (2) "It would appear, in fact, that Church is organized and operated merely as a tax scheme whose purpose, far from being religious, is to provide tax benefits to those who are willing to purchase deductions from Clippinger . . . . This court will not allow section 170 to be subverted by those who would twist it to their own private benefit - regardless of the scheme or artifice by which this is attempted.

And in Abney v. Commissioner, T.C. Memo. 1980-27 (1980), the taxpayer-husband established a church on a Universal Life Church charter. He transferred his personal funds to the church bank account and had his pay checks deposited in the church account. He registered his car in the name of the church and he and his wife gave all their possessions to the church. He took a vow of poverty and claimed a charitable deduction of gifts to the church. The taxpayers' claimed that by making a contribution to the church, they made a contribution to the ULC-Modesto. The Court held that some of the transfers didn't occur until a subsequent year and that taxpayers failed to show that they made any transfer of money or property to either their church or ULC-Modesto in year in question. The Court also held that their church didn't qualify under Sec. 170(c)(2) because of inurement and the fact that property would revert back to taxpayers. The taxpayers failed to show that their church is organized and operated exclusively for religious purposes.

And in Coomes v. Commissioner, 572 F.2d 554 (6th Cir. 1978), the taxpayer, a director of the Universal Christian Church, challenge disallowance of deductions for travel as contributions to church. Respondent in the Tax Court proceeding served a subpoena duces tecum on the taxpayer, calling for production of the church's by-laws, books, and financial records. The taxpayer refused on 1st Amendment grounds, the Tax Court case was dismissed. The Sixth Circuit held: 1st Amendment freedom of religion is not absolute, indirect and incidental burdens on it can be proper. Burden of proof is on taxpayer in Tax Court; since he didn't produce the subpoenaed records, the Tax Court properly dismissed. (Apparently, he also failed to produce anything else to meet his burden.)

be heard to contend that the lien had not attached to said funds. This Court concludes that the *Phelps* case is dispositive of all issues of jurisdiction and that the Bankruptcy Court lacks jurisdiction summarily to adjudicate the controversy without the Government's consent.

II. The Complaint Fails to State a Claim Upon Which Relief Can Be Granted

The Trustee alleges in his complaint that the Notice of Federal Tax Lien and Notice of Levy should be declared null and void under Section 67a(1) of the Bankruptcy Act since the filing of said Notice of Federal Tax Lien and serving of said Notice of Levy occurred within four months before the filing of the Bankruptcy petition. However, Section 67b of the Act specifically excepts statutory liens for taxes and debts owing to the United States from the provisions of Section 67a(1).

Since the Federal Tax Lien and Levy is valid in this case under the exceptions provided for in Section 67b of the Act, this Court concluded that the complaint as amended fails to state a claim upon which relief can be granted.

Order

Pursuant to the foregoing, the Motion to Dismiss filed by the Defendants is hereby sustained on both grounds, either of which is legally sufficient for this ruling.

[¶ 9344] United States of America and Kenneth Schaper, Revenue Agent of the Internal Revenue Service, Petitioners v. Toy National Bank and Rick Oldenkamp, Cashier, Respondents.

U. S. District Court, No. Dist. Ia., West. Div., Civil No. Misc. 79-4001, 2/27/79.

[*Code Sec. 7609*]

Third-party summons: Intervention: Production of bank records.—Both a religious organization with an individual exemption and its subordinate organization challenged, as intervenors, a summons to produce bank records of the subordinate organization. The subordinate organization was not covered by the exemption granted to its parent organization, but it was allowed to intervene and challenge the summons on its own. Back reference: § 5939D.20.

[*Code Secs. 7602 and 7604*]

Enforcement of summons: Examination of books: Bank records: Purported religious organization.—A summons to produce bank records was enforced, despite the proper intervention of a purported religious organization, the subject of the IRS investigation. First Amendment claims regarding the free exercise of religion are not applicable to a summons issued in good faith in connection with a legitimate examination. Back references: § 5924.06 and 5926A.05.

James H. Reynolds, United States Attorney, Sioux City, Ia. 51102, Kenneth Schaper, Internal Revenue Service, Des Moines, Ia. 50309, for plaintiffs. Rev. S. Mathis, P. O. Box 280, Sargent Bluff, Ia. 51054, pro se.

Opinion and Order

O'Brien, District Judge: This matter was heard on January 29, 1979. In addition to the Government's petition to enforce Internal Revenue Service summons, two motions to intervene and a motion to dismiss were heard. The motions to intervene should be granted; the motion to dismiss should be denied, and the Internal Revenue Service summons should be enforced.

A. Motions to Intervene

There is no question as to the right of the Full Circle Church to intervene under 26 U. S. C. 7609(b)(1). Under 26 U. S. C. 7609, Full Circle Church was entitled to, and was given, notice of the summons. As to the intervention by the Universal Life Church, Inc., the Court finds that intervention should be granted under Rule 24(b)(2), FRCP. The claim presented by the Universal Life Church, Inc. appears to be substantially the same as that presented by the Full Circle Church. Intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

B. Motion to Dismiss

Contrary to intervenor's motion to dismiss for lack of jurisdiction, the Court finds that jurisdiction in this case exists under 26 U. S. C. 7402(b) and 7604(a).

C. Petition to Enforce Summons

There are essentially three arguments presented by intervenors as to why this summons should not be enforced:

(1) The Full Circle Church is an integral part of the Universal Life Church, Inc. and covered by the recognition of exempt status granted the Universal Life Church, Inc.;

(2) The Full Circle Church is an exempt organization under 26 U. S. C. 508(c)(1)(A) and therefore not subject to investigation; and

(3) The bank records of the Full Circle Church are constitutionally protected from examination by the Internal Revenue Service.

(1) Blanket Coverage of the Universal Life Church, Inc. Exemption. The Universal Life Church, Inc. has not received a group exemption; it has an individual exemption only (see IRS Publication #78). The Full Circle Church (as a subordinate organization of the Universal Life Church, Inc.) is not included in the exemption granted the Universal Life Church, Inc. (see 26 CFR 601.201(n)(7)). The exemption granted the Universal Life Church, Inc. is not an issue here, and the Full Circle Church must challenge the summons on its own.

(2) Application of 26 U. S. C. 508(c)(1)(A). Section 508(c)(1)(A) excepts churches from applying for exemption under Section 501(c)(3). Therefore, a church is automatically an organization exempt from taxation unless there is a determination to the contrary. But intervenors' claim that the Full Circle Church is a "church" within the meaning of Section 508(c)(1)(A) is not dispositive of the issue. Assuming arguendo that intervenor is a church within the meaning of Section 508(c)(1)(A) and the statutory exception would apply, this would merely alleviate any necessity for filing to gain exempt status. It would not foreclose an investigation into the question of whether or not the Full Circle Church fell within Section 501(c)(3). One seeking a tax exemption has the burden of establishing the right to tax-exempt status, and an organization qualifies for exemption under 26 U. S. C. 501(c)(3) only if it meets the requirements of that section. See *Universal Life Church, Inc. v. United States* [74-1 USTC ¶ 9467], 372 F. Supp. 770, 775 (1974 E. D. Calif.). Whether or not an organization qualifies under Section 501(c)(3) is a question of fact into which the Internal Revenue Service may investigate in conjunction with the determination of that organization's tax liability; see 26 U. S. C. 7605(c). A mere allegation by an organization that it is a religious organization exempt under Section 501(c)(3) is not determinative of that issue. See *Passaic United Hebrew Burial Association v. United States* [63-1 USTC ¶ 9429], 216 F. Supp. 500, 502 (1963 D. N. J.).

(3) Constitutional Protection from Examination Under 26 U. S. C. 7602. The brief of Intervenor Universal Life Church, Inc. concedes there is no 4th Amendment right to privacy with regard to bank records. Nor is there a 5th Amendment protection here. See *Fisher v. United States* [76-1 USTC ¶ 9353], 425 U. S. 391, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976) and *Couch v. United States* [73-1 USTC ¶ 9159], 409 U. S. 322, 93 S. Ct. 611, 34 L. Ed. 2d 548 (1973). Intervenor raises 1st Amendment claims as regards the establishment and free exercise of religion, but 26 U. S. C. 7602 neither promotes the establishment of nor restricts the free exercise of religion. As it is constitutionally permissible to tax the income of religious organizations, *Parker v. Commissioner of Internal Revenue* [66-2 USTC ¶ 9617], 365 F. 2d 792, 795 (1966 8th Cir.), it follows that it is constitutionally permissible to investigate the potential tax liability of a purported religious organization. Intervenors have not informed the Court as to any cases holding to the contrary.

None of the contentions presented by intervenors in resistance to enforcement of the summons are of merit. The Court also finds the summons was issued in good faith and in connection with a legitimate examination; the summons seeks documents which are or may be relevant to the examination; and all proper procedures for the issuance of the summons were observed.

Therefore,

IT IS ORDERED that:

1. Full Circle Church and Universal Life Church, Inc. shall be allowed to intervene.

2. Full Circle Church's motion to dismiss is denied.

3. Toy National Bank and Rick Oldenkamp obey the Internal Revenue Summons which is the subject of this action, and they appear, testify and produce the items requested before Kenneth Schaper, or any other designated officer of the Internal Revenue Service, at such time and place as petitioners may specify.

RECESS

Senator **Abdnor**. And that concludes our witnesses for this morning. It's been a little over 3 hours of testimony and we're going to recess at this time and we'll reconvene this afternoon. We will stand in recess until 1:30.

[Whereupon at 11:45 a.m. the subcommittee was recessed to reconvene at 1:45 p.m. the same day.]

[AFTERNOON SESSION, 1:45 P.M., TUESDAY, AUGUST 4, 1981]

NONDEPARTMENTAL WITNESSES

STATEMENT OF DR. BELTON STEPHENS

Senator ABDNOR. We'll call the committee in and we'll continue with our witnesses. We'll try and be as generous with our time, however, we do have a number of witnesses yet to hear from in addition to the Commission, so we'll move right along.

I just once again want to show our witnesses that under no conditions do we let them be harassed and I'm sure the Commission will agree with us that just because someone comes forward and tells us their views and incidents that may have taken place with them personally, it will in no way affect them in their relation with the IRS.

And so with that, we're going to continue today with Dr. Belton Stephens, who was scheduled for the morning, but we'll start off with you this afternoon, Doctor.

Dr. STEPHENS. Thank you. I consider it a privilege to be here and to have this opportunity and as a little background information I would like to state the following. I will try and keep this brief. It's a little over 3 pages.

But I am a practicing oral surgenon here in Anchorage, I've been practicing here since 1968. I've been a resident of this State for 15 years and have been a faithful taxpayer. I'm an honest citizen and a Christian and I do not belong to any tax resistance group. I am used to talking to patients on a one-to-one basis and have no experience appearing before committees and large groups. I have no expertise as a lawyer or an accountant. I have never been delinquent with my debts and have never been turned over to any collection agency and have never been on trial or arrested.

IRS INJUSTICES

My reason for being here is to inform this committee of some of the injustices which I feel have occurred between the IRS and myself. I feel that there are other honest taxpaying citizens of this great country who have had similar experiences and that by coming forward I might be helpful to this committee's understanding of the inefficiencies of the IRS.

On April 15, 1979, the individual 1040 for 1978 for taxpayers Dr. Belton and Norma Stephens, social security Nos. 418-18-6448 and 421-36-3489, was filed with the Internal Revenue Service with a substantial tax liability which was paid in full by both withholdings and check attached to return at time of filing.

September 4, 1979, the local office of a national accounting firm which had prepared the original return for 1978, phoned me to tell me that there had been an error made on the original 1040 and an amended 1040-X was in order, thereby putting me in a refund status for 1978. The amended return was signed and mailed to the Internal Revenue Service. October 2, 1979, confirmation was received from Ogden that they had received the 1040-X.

As of April 15, 1980, the aforementioned refund had not been received by myself, so the 1978 1040-X refund was carried to line 56 of 1040-1979, leaving me in a refund status for 1979.

SERIES OF CORRESPONDENCE WITH IRS

On June 16, 1980, a letter was received from the Internal Revenue Service billing me for what they claimed was a deficiency of 1040-1979, plus interest and penalty of underpayment. In response, a letter was written to the IRS on June 17, 1980, and mailed certified, explaining the meeting with the Anchorage Taxpayer Assistance Office and requesting that they put an indefinite hold on all penalty and interest until the 1978 refund had been processed. The Anchorage office informed me that they would put a 15-week hold on all penalty and interest as that was the maximum time limit that could be requested at one time, meaning that every 15 weeks we would have to request another hold. Also at this meeting with the Anchorage office, I first became aware that there was confusion—as the agent put it—on 1975-77 returns, though they weren't sure what the problem was and also informed me that my 1978 1040 was under desk audit.

July 14, 1980, brought a letter from the IRS confirming the receipt of the letter referencing abatement and the indefinite hold on the 1979 assessments, stating that "no further action was required of taxpayer at this time."

October 10, 1980, another letter was received stating that the same carry forward from the 1040-X-1978 to the 1040-1979 was still due, again adding additional interest and penalty. Another letter was mailed by me to the IRS in Ogden, Utah, explaining the situation and requesting an abatement in the light of the circumstances. In addition the Anchorage office was also notified.

On August 13, 1980, a letter was received from Agent Neal of the IRS stating he was inheriting audits from 1976 and 1977 as I had not agreed to adjustments referencing the depreciation of the business automobile that had been disallowed on 1976 and 1977. A point to be made here is that the depreciation was being denied me for the 90 percent usage of the automobile originally claimed for business—even though I owned three private vehicles. The IRS was contending only a 30 percent usage which seems unreasonable for a practicing oral surgeon. This was the second reference by the Service that there was a problem on my prior years' returns, though by dates on file form 872's giving the IRS extensions dating from March 20, 1979 in reference to a partnership that I was involved in that apparently was under audit also. In my file there are numerous 872's giving IRS until June 30, 1981 to complete 1975-77 audit affected by any changes from partnership audit.

On September 5, 1980, I heard again from an IRS agent excusing one more time the lack of coordination and erroneous analysis of my situation but he was wrong again and another 872 needed a signature for 1975-77 returns, yet the final adjustments proposed for

1975–77 returns were enclosed signed by the IRS agent and dated September 3, 1980.

On October 30, 1980, a letter was received from Matt Walicki, an auditor for the IRS that my 1978 return was being audited, therefore a list of 11 items "plus additional items that the examination requires" were requested to be brought to the office of the IRS for audit in early November. I might say here, these other items were unknown to me so I took everything, everything I had and they were needed.

In early November 1980, I and my accountant took the requested receipts, check register, bank statements, et ceterra, to the IRS Office and sat through an 8-hour audit which included searching for a $5 item of expense claimed on the return. In addition, the auditor apparently became angry when his request to copy certain papers was denied.

One of these papers being asked for was my homeowners insurance policy which he then began to read in its entirety, then stating, "OK, it's your time." Of course the audit was not completed at this time as 4:30 p.m. came and it was time to close the office, so I was forced to carry the boxes back home with an incomplete audit. My accountant had several more conversations and meetings with the auditor in order that the audit might be completed. The audit was not so much the point here as the treatment of a taxpayer and the attitudes of the IRS personnel, for which a taxpayer goes out of his way to get all the sufficient information that an audit requires and then cannot even convince an auditor to complete the materials at hand, it makes for a one sided situation. Furthermore, in March 1981, when all the figures were in and final totals were added, the only adjustment made was a $14 decrease of my 1978 1040–X refund. The final papers were even walked over to my office by the auditor for signature. I might add here I did not wish to put this in print or to testify in public as to the amount but it was a sizeable refund, a sizeable thing that we were talking about and only $14 difference after all of that.

On March 27, 1981, it was believed that all was finally going to be finalized just to find in the mail a letter from the State of Alaska stating the IRS had levied my 1980 State refund. Upon receipt of this letter the IRS in Anchorage was called. I was informed that I would have to contact the collection department. The collection department told me that all my bank accounts et cetera were about to be attached. I informed this collection agent that the Service owed me a substantial refund and that I had been cleared by the auditor in Anchorage and Seattle. I was told to bring the paperwork down immediately. I informed this agent that I had an office full of patients requiring treatment and that I was an honest taxpayer working to earn moneys which would be taxed thereby helping to maintain her so that she could seek out fraudulent individuals. I was then advised to bring the papers in as soon as possible and a mutual date was set.

ATMOSPHERE IN COLLECTION DIVISION

Upon entry in the Collection Division I must say that I felt like I was in jail or prison. The reception area is cold, bleak, and unattended. it has a stand up counter where I pressed a button and in a short time an agent appeared through an electrically locked door. I would invite you to take a tour of the collection department and go in—the first place—the only place that the taxpayer sees and imagine yourself being there called on the carpet for something that you're right about all the time. Of course, you'll get the royal treatment being the people that you are, but still, look around you. We've nice surroundings here. Why put us in a little cubicle there and make us stand up. It's not the American way of life that I was raised up for, gentlemen.

After this agent appeared I had to request twice that we might be seated. After this the conversation revealed the following: I asked why my assets were being levied without my being notified. I was told that Ogden had written me five times. To this I stated that I had replied by certified mail. The agent showed me a code number which supposedly indicated that Ogden had never received any reply from me. When I asked why since I had returned receipts, I was told that the Service had to hire many handicapped people and that the personnel were often inefficient. At the conclusion of this visit, I was told by the agent that the finalized papers should have cleared Ogden and Seattle and would be returned to them.

I recently received 10 notices all dated July 13, 1981, from Ogden referencing 1975, 1977-78 liability and refund status. However, refund status for 1976 was never received or was I informed where the levied Alaska State refund had been applied. At this point the problem resolution officer was notified and I was cautioned about the possibility of another levy against my bank accounts, et cetera, if the notices from Ogden were received by certain people in the service center. She researched on microfilm and sent an explanation dated July 29, 1981, of various money transactions being encountered. She further stated, quote "It appears that there was a breakdown in communication between divisions resulting in the levy of your State tax refund."

To state simple fact, one would think this would be simple enough but obviously from the confusion that was created with the overlapping, duplicating and various office and branch involvements simplicity is no more.

Again I am sure our situation is not unique but the cry of millions of American taxpayers as they endeavor to work and make an honest living so as to keep our country free.

So you see at a time like this all the "I'm sorrys" "my apologies" et cetera fall short of the justice due a taxpayer who has had to endure such situations with nowhere to go for an accurate, truthful statement of even the status of one's dealings with the IRS.

Thank you.

AUDIT PROCEDURES QUESTIONED

Senator ABDNOR. Dr. Stephens, thank you. I can see you've been here practically all day and we appreciate your patience. Your story is difficult to imagine it could happen. It's been very well documented. You certainly have documented well all that has happened to you over the period of time and certainly I hope in the final analysis, you'll end up with what's deserving of you.

Senator Stevens, do you have anything?

Senator STEVENS. I thank you, Doctor, for taking the time to prepare the statement too. I think we must ask the Internal Revenue Service about items like this and try to get some policies that deal with how the audits are going to be conducted and how the direction division gets involved when there's already a refund due. I think there's just some questions I have to ask about the procedure. How that could possibly take place that you have levying against your State refund and at the same time you're waiting for a refund from the IRS for another year.

Am I correct in understanding the situation?

Dr. STEPHENS. Yes.

Senator STEVENS. I also don't quite understand spending that much time with an audit on $5 items of an expense account that obviously must have been quite detailed.

Dr. STEPHENS. It was a very detailed audit, sir, and I believe the——

Senator STEVENS. How did the homeowners policy get involved at all?

Dr. STEPHENS. I had a small casualty loss, sir, exceeding $100 deductible due to wind damage.

Senator STEVENS. Why was the homeowners policy involved?

Dr. STEPHENS. He wanted to make sure that they didn't pay for it, I guess, and they didn't. It was not covered, that particular wind damage.

Senator STEVENS. Well, I do thank you, Doctor.

Senator MURKOWSKI. I too, Doctor, want to compliment you on the well-prepared statement. You indicated at the conclusion of your statement that you had received 10 notices, all dated July 13, 1981. There was no personal notification by telephone or letter other than the 10 notices that came all at once?

Dr. STEPHENS. No, computer forms.

Senator MURKOWSKI. And then you were advised—you say that they researched on microfilm and sent an explanation dated July 29?

Dr. STEPHENS. I have that with me, sir.

Senator MURKOWSKI. And that was the only communication that you had received then after receiving the 10 notices and that notification indicated that you could potentially expect a further audit, is that right?

Dr. STEPHENS. No, sir, no, sir. I—my bookkeeper and accountant was given a verbal message that if this information should get into "the wrong hands of certain people, who might not be familiar with the case, I again could have all of my assets locked up just immediately." So this was of potential worry to me.

Senator MURKOWSKI. Thank you.

Senator ABDNOR. Dr. Stephens, again we thank you for coming forward like this and telling us—giving us an account of your experience. It's unfortunate.

One last thing, is your tax return prepared by an accountant, is it or tax specialist?

Dr. STEPHENS. Yes, sir. Yes, sir, I've had quite a bit of experience. If you notice the one statement there, it might not stand out, but the whole thing started with a national accounting firm making quite a significant error.

Senator **Abdnor**. And this was part of the whole thing? You're going to get a refund and then all the previous—audit of previous years and all that went with it?

Dr. **Stephens**. No, sir, just on the one year.

Senator **Abdnor**. I thought maybe you were talking aobut several other years.

Dr. **Stephens**. They did bring in several other years that were audited. All that had to do with was use of the automobile.

Senator **Abdnor**. I see. Thank you very, very much.

[Reference material of Dr. Belton S. Stephens follows:]

BELTON S. STEPHENS, D.M.D.
ORAL SURGERY
1020 WEST FIREWEED
ANCHORAGE, ALASKA 99503
TELEPHONE 272-5123

August 4, 1981

I am a practicing oral surgeon in Anchorage and have been practicing here since 1968. I have been a resident of the state of Alaska for 15 years and have been a faithful taxpayer. I am an honest citizen and a Christian, and I do not belong to any tax resistance group. I am used to talking to patients on a one to one basis and have no experience appearing before committees and large groups. I have no expertise as a lawyer or an accountant. I have never been delinquent with my debts and have never been turned over to any collection agency and have never been on trial or arrested.

My reason for being here is to inform this Committee of some of the injustices which I feel have occurred between the IRS and myself. I feel that there are other honest taxpaying citizens of this great country who have had similiar experiences and that by coming forward I might be helpful to this Committees understanding of the inefficiencies of the IRS

On April 15, 1979, the Individual 1040 for 1978 for taxpayers Dr. Belton and Norma Stephens, SS#'s 418-18-6448 and 421-36-3489, was filed with the Internal Revenue Service with a substantial tax liability which was paid in full by both withholdings and check attached to return at time of filing.

September 4, 1979, the local office of a national accounting firm which had prepared the original return for 1978, phoned me to tell me that there had been an error made on the original 1040 and an amended 1040X was in order, thereby putting me in a refund status for 1978. The amended return was signed and mailed to the Internal Revenue Service. October 2, 1979, confirmation was received from Ogden that they had received the 1040X.

As of April 15, 1980, the aforementioned refund had not been received by myself, so the 1978 1040X refund was carried to line 56 of 1040/79 leaving me in a refund status for 1979.

On June 16, 1980, a letter was received from the Internal Revenue Service billing me for what they claimed was a deficiency of 1040/79, plus interest and penalty of underpayment. In response, a letter was written to the IRS on June 17, 1980, and mailed certified, explaining the meeting with the Anchorage Taxpayer Assistance Office and requesting that they put an indefinite hold on all penalty and interest until the 1978 refund had been processed. The Anchorage office informed me that they would put a 15 week hold on all penalty and interest as that was the maximium time limit that could be requested at one time, meaning that every 15 weeks we would have to request another hold. Also at this meeting with the Anchorage office, I first became aware that there was confusion (as the agent put it) on 1975, 1976, and 1977 returns, though they weren't sure what the problem was and also informed me that my 1978 1040 was under desk audit.

July 14, 1980, brought a letter from the IRS confirming the receipt of the letter referencing abatement and the indefinite hold on the 1979 assessments, stating that "no further action was required of taxpayer at this time."

October 10, 1980, another letter was received stating that the same carry forward from the 1040X/78 to the 1040/79 was still due, again adding additional interest and penalty. Another letter was mailed by me to the IRS in Ogden, Utah explaining the situation and requesting an abatement in the light of the circumstances. In addition the Anchorage office was also notified.

On August 13, 1980, a letter was received from Agent Neal of the IRS stating he was inheriting audits from 76 and 77 as I had not agreed to adjustments referencing the depreciation of the business automobile that had been disallowed on 76 and 77. A point to be made here is that the depreciation was being denied me for the 90% usage of the automobile originally claimed for business (even though I owned three private vehicles). The IRS was contending only a 30% useage which seems unreasonable for a practicing oral surgeon. This was the second reference by the service that there was a problem on my prior years returns, though by dates on file form 872's giving the IRS extensions dating from 3/20/79 in reference to a partnership that I was involved in that apparently was under audit also. In my file there are numerous 872's giving IRS until June 30, 1981 to complete 75,76, and 77 audit affected by any changes from partnership audit.

On September 5, 1980, I heard again from an IRS agent excusing one more time the lack of coordination and erronous analysis of my situation but he was wrong again and another 872 needed a signature for 1975-1977 returns, yet the "final adjustments" proposed for 1975, 1976, and 1977 returns were enclosed signed by the IRS agent and dated September 3, 1980.

On October 30, 1980, a letter was received from Matt Walicki, an auditor for the IRS that my 1978 return was being audited, therefore a list of eleven items "plus additonal items that the examination requires" were requested to be brought to the office of the IRS for audit in early November.

In early November, 1980, I and my accountant took the requested receipts, check register, bank statements, etc., to the IRS Office and sat through an eight hour audit which included searching for a $5.00 item of expense claimed on the return. In addition, the auditor apparently became angry when his request to copy certain papers was denied. One of these papers being asked for was my homeowners insurance policy which he then began to read in its entirety, then stating, "O.K., its your time". Of course the audit was not completed at this time as 4:30 p.m. came and it was time to close the office, so I was forced to carry the boxes back home with an incomplete audit. My accountant had several more conversations and meetings with the auditor in order that the audit might be completed. The audit was not so much the point here as the treatment of a taxpayer and the attitudes of the IRS personnel, for which a taxpayer goes out of his way to get all the sufficient information that an audit requires and then can not even convince an auditor to complete the materials at hand, it makes for a one sided situation. Furthermore, in March, 1981, when all the figures were in and final totals were added, the only adjustment made was a $14 decrease of my 1978 1040X refund. The final papers were even walked over to my office by the auditor for signature.

On March 27, 1981, it was believed that all was finally going to be finalized just to find in the mail a letter from the State of Alaska stating the IRS had levied my 1980 state refund. Upon receipt of this letter the IRS in Anchorage was called. I was informed that I would have to contact the Collection Department. The Collection Department told me that all my bank accounts etc were about to be attached. I informed this Collection agent that the Service owed me a substantial refund and that I had been cleared by the auditor in Anchorage and Seattle. I was told to bring the paper work down immediately. I informed this agent that I had an office full of patients requiring treatment and that I was an honest taxpayer working to earn monies which would be taxed thereby helping to maintain her so that she could seek out fraudulent individuals. I was then advised to bring the papers in as soon as possible and a mutual date was set.

Upon entry in the Collection division I must say that I felt like I was in jail or prison. The reception area is cold, bleak and unattended. It has a stand up counter where I pressed a button and in a short time an agent appeared through an electically locked door. I would invite you to take a tour of the Collection Department noting the reception area and imagining that you were there on business.

After this agent appeared I had to request twice that we might be seated. After this the conversation revealed the following: I asked why my assets were being levied without my being notified. I was told that Ogden had written me five times. To this I stated that I had replied by certified mail. The agent showed me a code number which supposedly indicated that Ogden had never received any reply from me. When I asked why since I had return receipts, I was told that the Service had to hire many handicapped people and that the personel were often inefficient. At the conclusion of this visit, I was told by the agent that the finalized papers should have cleared Ogden and Seattle and would be returned to them.

I recently received ten (10) notices all dated July 13, 1981, from Ogden referencing 1975,1977 and 1978 liability and refund status. However, refund status for 1976 was never received or was I informed where the levied Alaska State refund had been applied. At this point the Problem Resolution officer was notified and I was cautioned about the possibility of another levy against my bank accounts, etc, if the notices from Ogden were received by certain people in the Service Center.

She researched on microfilm and sent an explanation dated July 29, 1981 of various money transactions being encountered. She further stated quote "It appears that there was a breakdown in communication between divisions resulting in the levy of your state tax refund."

To state simple fact, one would think this would be simple enough but obviously from the confusion that was created with the overlapping, duplicating and various office and branch involvements simplicity is no more.

Again I am sure our situation is not unique but the cry of millions of American taxpayers as they endeavor to work and make an honest living so as to keep our country free.

So you see at a time like this all the "I'm sorrys" "my apologies" etc fall short of the justice due a taxpayer who has had to endure such situations with no where to go for an accurate, truthful statement of even the status of ones dealings with the IRS.

Respectfully,

Belton S Stephens, DMD

STATEMENT OF BUD SMALL

Senator Abdnor. The next witness is Bud Small.

Mr. Small, we welcome you to the committee and please proceed. I guess we'll have your testimony?

Mr. Small. Yes, sir. I brought two copies of testimony in yesterday.

Senator Abdnor. Please proceed.

Mr. Small. You want me to read this testimony that I submitted?

Senator Abdnor. It's not necessary. We assure you it will all be put into the record. You can summarize it.

Mr. Small. Fine. I've had, I think, five audits since 1969 with the local office and there have been problems with most of them. The 1969 audit, I took all the way up to the small claims tax court and in effect he settled it the way I wanted it settled originally. And then on this 1977 audit, it's been the worst one yet.

It started about 21 months ago and I've got about 130 hours as I mentioned in the testimony here, invested in it so far and I'm just going back for an appeal right now. There's been two complete sets of findings on it and the last finding will be detrimental to my business. I buy rental properties and now she's assigned me a dealership status. It's necessary to turn these properties for one reason or another on occasion and that's going to completely change the outlook on my income potential with this dealer status assigned which appears to me to have been assigned in retaliation to the fact that I stood up to them on the 1977 audit.

All these matters are covered in the letter and I can provide the documentation of all of the documents from the IRS and back information, letters I've written them, if that should be necessary.

Senator Abdnor. That's your summary then?

Mr. Small. Yes sir. That's about what it amounts to.

Two pages with my name in the upper right-hand corner.

Senator Abdnor. Your problems started with the 1-year audit was it, or has it gone back further?

Mr. Small. Well, there's been some problems about previous audits all the way back. My testimony is just in reference to the 1977 audit and the fact that they incorporated the 1978 audit into it before the end of the 1977 audit.

Want me to just read the letter?

Senator Abdnor. Oh, there we are. You said they put you in the category of a dealership?

Mr. Small. Real estate dealer because in a couple years on 1977—end of 1976 and 1977, I did sell more properties than I normally would have but I was going through a divorce at the time and I ended up I had 30-some rental units in about six different buildings and it was more than I could handle by myself. But the buildings were all held but for at least the time that the tax code requires, you know, over in excess of a year. Some in 1976, I think, were sold short of a year because at that point there was only a 6-month or a 9-month holding period.

Senator Murkowski. Do you use a real estate agent to sell your property?

Mr. Small. No. I do have a real estate license, too.

Senator Murkowski. Do you employ realtors, salesmen?

Mr. SMALL. Yes, yes.

Senator MURKOWSKI. You employ salesmen, too?

Mr. SMALL. Yes; as I say, I am a salesman myself. Some of the buildings I sold myself and some of them were sold by other people and commissions paid.

Senator MURKOWSKI. And you employ salesmen?

Mr. SMALL. Yes, sir.

Senator STEVENS. You mean when you're selling your own property?

Mr. SMALL. I list it in the multiple listing service so that it's available for any salesman in town to sell, but in some cases I sold them myself through being in the business.

Senator MURKOWSKI. But you have a real estate license. Do you hire, or do you have affiliated with you, real estate salesmen?

Mr. SMALL. No; I'm just a salesman myself. I'm not a broker.

Senator MURKOWSKI. Thank you.

Mr. SMALL. I'm sorry. I misunderstood your question, Senator Murkowski.

Senator ABDNOR. Well, Mr. Small, I assure you we'll put your entire statement into the record and we appreciate having you.

Any other questions?

Senator STEVENS. What caused you to have to sell that property in connection with your divorce?

Mr. SMALL. It was more than I could manage, sir. I ended up with so many rental units and chasing around. My ex-wife used to be of some assistance and it was just more individual units and there were economic reasons for it, too. The pipeline was winding down and I could see that the large multifamily buildings weren't going to be as good as single-family, or smaller buildings and I changed my investment approach from 4-, 6-, 8-, 10-plexes down to single-family buildings and I've got one commercial building. Now I have nothing more than duplexes. I've got one duplex and several single-family.

Senator STEVENS. You say you've been involved in this audit for the last 21 months?

Mr. SMALL. Yes, sir. It started—the first notice was in December 1979, and the first meeting was in January 1980. There's been a lot of long delays. After my meeting in January, we had a meeting in April out at my home where this auditor was over all my papers and told me when she left, she'd send me a letter out detailing the few things she needed to complete the audit, and it was 7 months before I heard back from her.

STATUTE OF LIMITATIONS WAIVER

Senator MURKOWSKI. Did you ever sign that waiver of the statute of limitations?

Mr. SMALL. Yes; I finally had to after I signed the policy over. Otherwise they were just going to close it out the way they had it. Even when they finally did close it, for instance, they took copies that I wasn't aware of the—my deposit ledger sheets. Then they went back and in their findings they came up with something about $3,000—didn't work it right down to the penny, but about $3,000 more rental income than it could have produced if every unit I had that year was rented and every check I got was good and everything else all year. But they just did this by tallying up the deposit audits. It had some cash deposits in there which were paid back. I'd probably have to admit my bookkeeping system isn't perfect, but I don't think you could get one perfect enough to satisfy all their demands. I gave up on an accountant a couple of years before this because I had so many problems with the way they were ended up being done and had been doing my own bookkeeping. But a lot of cash deposits that were in there were two $300 loans we had made to the kids and they pay it back and just pay it out of their pocket and I end up with more cash in my pocket than I want and I deposit it in the bank. So they charged all that to rental income. I didn't have any documentation. Some of them were the cashier's—traveler's checks to make trips—didn't use them all and redeposited them when I came back in. But I didn't document each one of those little activities.

Senator Stevens. Thank you very much.

Senator Abdnor. Thank you, Mr. Small. We appreciate you coming forward and telling us of your problems.

Prepared Statement of Merwyn C. Small

I received the first notice of audit of my 1977 tax return by letter about mid December 1979. I called the local IRS office and scheduled an appointment for early January 1980, for an office audit with Dorothy Malcho, (name later changed to Dorothy Svados.)

On arrival at my first meeting with Mrs. Malcho, I made the remark that I was glad to meet her, she replied that I was not glad to meet her as no one appearing for an audit was ever glad to meet anyone in the IRS office. I've been audited many times before, but never by anyone with such an unpleasant attitude.

I was then informed that I didn't have enough information with me to complete the audit. This statement was made prior to the time I opened either of the two large brief cases I had brought with me.

After spending about three hours, a large part of it waiting for her to go check with her supervisor, on three occasions, going over information I had, we arranged a meeting at my home for April 10th. During this office visit, I later realized she had made copies of my cash receipts ledger sheets. I received a letter changing the meeting date to April 24th 1980. The audit sessions at my home lasted about 4 hours and I produced nearly everything she requested. She advised me just prior to leaving that she would write me a letter outlining the remaining information she would need to complete the audit.

About 4 or 5 weeks later I happened to be in the building the IRS office and stopped by there to ask Mrs Malcho if she had sent me the letter yet, as I was concerned it might have been lost in the mail. She told me she hadn't completed it yet, but would get it to me soon. The next thing I received from the IRS was a letter requesting I sign an attached Waiver of Statute of Limits form. This arrived in mid October of 1980. I took that letter and waiver form to IRS office the next day and explained that I wanted the audit completed and not dragged on and would rather not sign the waiver and again asked about the letter, I had been waiting six months for. Finally in early November 1980 nearly seven months after the meeting at my home I received the letter from then Dorothy Malcho Svados. It outlined the items she needed and setting a meeting date about 2 weeks later. I had a trip planned outside for about 3 weeks at that point and called to reschedule the meeting for December 19, 1980.

On December 18th I called to ask Mrs. Svados about one item on the list and to confirm our schedule. I was informed she was not in the office due to sickness of a child and that she would not be back in the office until at least the next week. I agree that she should be with her sick child, but do feel they should have notified me of the cancellation of my appointment. I left word for her to call me when she returned to work. I had no call from her by the end of the holidays and called her on January 2nd or 3rd to ask about the audit and requested the audit be assigned to someone else for completion. Mrs. Svados said she would have to check with her supervisor and would call me back. She called back 2 or 3 days later and informed me she was advised by her supervisor that she would have to complete the audit. I asked for her supervisor's name and was advised she was Nancy Hazelton. I finally reached Mrs. Hazelton after 3 days of calling and leaving work for her to call me and explained why I wanted to be assigned to another auditor, she said she had no one else to take over the audit. I requested she hold the audit open until I could contact my Senator about the matter. She then asked me to hold on a minute and she would see if she could arrange other means to handle it. Within about 2 minutes a Mrs. Rhoda Hewitt, (a very capable person) came on the phone and informed me she would complete my audit.

We set an appointment for late in January and went thru all the points she wanted covered and she worked up her findings and sent me a letter outlining her findings, during this January meeting my 1978 return turned up in the file for audit.

I answered her letter with additional information and requested an appeal to her findings on my 1977 return, as there were many items that were completely unfounded, (I can furnish more details on these findings and copies of all documents to do with this audit if they will help.)

From the date of my request for an appeal there was another delay of about 4 months, while I waited to hear from the appeals office. I then received a call from Mrs. Hewitt informing me the appeal division had returned the case to her as it was incomplete. I had another meeting with Mrs. Hewitt to try to complete the audit. She came up with completely different findings on this one showing no tax due, but charging me with a dealer status in Real Estate that is very serious impairment to my Rental Real Estate business and I feel this was done in retaliation for standing up for my rights. I have again requested an appeal of this finding.

I have spent at least 130 hours of unproductive time on this audit over the last 21 months and it appears it could drag on for another year or more.

Thank you for any assistance you might be able to render on this matter to me and many others who are unreasonably attacked by the local IRS office. If my testimony or any further documentation will be of any help in these hearings. I will be glad to assist. I will be leaving the state about September 1st and will be in and out of state periodically till the spring of 1982.

STATEMENT OF MILTON BANGS III

DISALLOWANCE OF W-4 FORM

Senator **Abdnor**. Our next witness is Milton Bangs III.

Mr. **Bangs**. Hello.

Senator **Abdnor**. Mr. Bangs, we're glad you're here. Have you prepared a statement?

Mr. **Bangs**. No, I haven't.

Senator **Abdnor**. All right, proceed then.

Mr. **Bangs**. All right. My main complaint here is that I've had a number of form letters from the IRS and I have written them letters which they refused to answer for some reason or another. And then as time has gone by here, I just recently received a letter where they're instructing my employer to hold one dependent on my W-4—W-4 form, no matter what I request. And it's my understanding that the W-4 is to be changed only by me and I don't understand where they get this right. It seems to me it's a direct violation of my constitutional rights to my property.

Senator **Abdnor**. You say they pulled one of your dependents?

Mr. **Bangs**. Yes. They told my employer that I can only claim one dependent or one allowance.

Senator **Murkowski**. Do you have a letter to that effect from your employer?

Mr. **Bangs**. Yes, I have it right here.

Senator **Murkowski**. Why don't you read it into the record, just that portion.

Senator **Abdnor**. Thank you, that's a good point.

Mr. **Bangs**. It says:

We reviewed your form W-4 employee's withholding allowance certificate which your employer forwarded to us in accordance with the employment tax regulations. Your form W-4 does not meet the requirements of section 3402 of the Internal Revenue Code and related employment tax regulations for the reasons checked at the end of this letter. Therefore, we have directed your employer to disregard your form W-4 and, * * *.

Then there's a number of boxes they've checked. There's three of them and the first one is: "Disregard any new form W-4 claiming exemption from withholding in calendar year 1981." And the next box:

Withhold tax on the basis of a single withholding allowance until he or she receives a new form W-4 from "your—" from you claiming no more than this number of withholding allowances. If you submit a new form W-4 claiming more than this number of withholding allowances, your employer has been directed not to honor it. However, if you attach to your new form W-4 a written statement explaining your change and circumstances or any other reasons justifying your claim for more withholding allowances, your employer will send a copy of your new form W-4 with your supporting statement immediately to the Internal Revenue Service. In the meantime your employer must withhold on the basis of single withholding allowances until he or she receives further instructions from the Internal Revenue Service.

EXEMPT STATUS ON WITHHOLDING

Senator **Stevens**. How many allowances had you claimed?

Mr. **Bangs**. I'm claiming exempt. I'm claiming exempt. I didn't pay any tax last year and I don't expect to pay any this year.

Senator **Stevens**. But how many allowances did you claim?

Mr. **Bangs**. Exempt. I'm exempt from allowances. I didn't claim any allowances. I claimed exempt. You're allowed to claim exempt if you didn't pay any withholding the year before and don't expect to pay any this year.

Now there's one more box here that they've also checked out. It says: "Based on information available to us, you are entitled to claim no more than one withholding allowances on your form W-4."

Now before I received this letter I had written to them a letter which I had received no answer for from them and I made, I think, reasonable requests. In this letter which, you know, I had questions in my mind about——

Senator **Murkowski**. Let me just ask one question. You said that they advised you to claim one less than you were claiming?

Mr. **Bangs**. No, they advised me that I could only claim one, me, that's it.

Senator **Murkowski**. And you're employed and your employer——

Mr. **Bangs**. I'm employed with Ocean Technology.

Senator **Murkowski** [continuing]. Does not hold any withholding?

Mr. **Bangs**. They had been holding exempt which I requested and then due to the IRS—now in the meantime I had written the IRS a letter.

Senator **Stevens**. What's the basis for your being exempt?

Mr. **Bangs**. The basis for me doing exempt?

Senator **Stevens**. Yes.

Mr. **Bangs**. I don't believe I owe any income tax. I believe that the IRS is violating my constitutional rights by me signing a 1040 form. I had to give up——

Senator **Stevens**. Well, I think we better listen to some people—we're trying to make a record here involved in cases of harassment. We're not getting into the constitutional issues here. That's not our committee's jurisdiction. I think you ought to write your letters to the Judiciary Committee concerning the constitutional claims that you may have as to whether you're exempt from taxes or not. With all due apologies, we're trying to make another record and trying to get answers to questions people have raised who do pay their taxes, who think they have been wronged and they have been asked to come in and justify what they've done.

But, Mr. Chairman, I don't think we can get into the constitutional questions. That's not our jurisdiction.

Senator **Abdnor**. It's not in our jurisdiction at all. We were here strictly on harassment. We have both Finance Committee and Judiciary Committee that handles other areas.

Mr. **Bangs**. I can appreciate that but I do have a question as to why I was not at least given a hearing as to why I wanted to claim exempt. That was just overlooked by the IRS.

Senator **Stevens**. You're making your claim on the basis you're exempt on a constitutional claim that you should not have to pay taxes?

Mr. **Bangs**. That I don't want to give up my constitutional rights.

Senator **Stevens**. But you've got to understand we have a certain jurisdiction to hold hearings and that's not within our jurisdiction. To go into the constitutionality of income taxes is another committee's problem and the court's problem. It's not ours. Ours, we're looking to the question of oversight of the Internal Revenue Service to see whether or not the procedures of the Internal Revenue Service ought to be modified because of claims that individuals have made about the use of the IRS procedures leading to harassment and their individual problems. But with all due respect, we cannot go into the constitutionality question. It's not our jurisdiction. We're part of the Appropriations Committee. We're looking at the oversight of the Internal Revenue Service and the constitutional questions are not our concern.

Mr. **Bangs**. All right. What should I do in this case then?

Senator **Stevens**. I suggest that you see a lawyer or write to the Judiciary Committee or write to the Justice Department but it's not—that's not the subject of this hearing.

A **Voice From Audience**. Isn't the IRS harassing this gentleman by overriding his right?

Senator **Stevens**. You're not a witness. You're not before us. Please, we've got to keep this orderly so the record will be plain for my colleagues, so my colleagues will be able to read it and understand. What we're trying to do is solve some of the problems that the claims that have been made about the use of the IRS procedures and the regulations and how they've been handled and treated individually when they went to the IRS, on the basis that they had paid taxes. They feel, as the doctor has, that he's been mistreated.

Senator **Abdnor**. Thank you, Mr. Bangs, I think that pretty well summarizes it.

Our next witness is Carl McDonald. Is Mr. McDonald here in the audience?

Again, is Lee Stoner? Has Lee Stoner come in since we last called?

Virginia Cutshall?

At this time then, we'll call on Commissioner Roscoe Egger.

ADDITIONAL MATERIAL

Before continuing with IRS Commissioner Egger, we will insert additional material from various individuals not heard during the course of the hearing.

[The information follows:]

LETTER FROM VIRGINIA K. CUTSHALL

Virginia K. Cutshall
Certified Public Accountant
2805 Dawson, Suite 105
Anchorage, Alaska 99503
Telephone (907) 279-0558

August 3, 1981

Honorable Senator Ted Stevens
Anchorage,
Alaska

Re: IRS Problems

Taxpayer: James Robertson
523-07-4544

Dear Sir:

Taxpayer contacted for audit re:

1. Claiming 80 year old mother he has supported for past 20 years or more and
2. Rental income and expense.

Taxpayer provides housing food, clothing and medical for his mother.

She receives:	$190.00	per month Social Security
	50.40	per month VA benefits.
	$240.50	total per month

Her medical bills are high - about $1,000 per year (her portion, balance paid by medicare). Estimated value of care provided by taxpayer $5,000 per year. Form 2038 provided and rejected by IRS.

Original audit substantiated all expense except

1. Interest on rental property and
2. Purchase paper on duplex and 5 plex per form 526 12/24/79

Taxpayer did not receive normal 90 day letter - copy of IRS register and notice from USPO showing letter was neither delivered nor returned.

The taxpayers reported income was not challenged.

Taxpayer purchased a tractor to clear the snow in the winter at his rental units. Substantiation for the purchase was made. Taxpayer claimed a five year life on the tractor.

IRS disallowed 20% of depreciation even though it's used on 10 units.

Duplex

Taxpayer had used the same figures for depreciation for past 8 years - original cost (built by taxpayer) was $50,000. Taxpayer (after 8 years) had about $35,00 of receipts and checks.

5 plex

20% of the 5 plex, all personal furniture and appliances, and 20% of utilities, taxes, insurance and other expenses were taken at the time the tax return was prepared and substantiated in original audit. IRS has taken an additional 40% for personal use of building, furniture, generator and improvements totalling about $8299 in expenses disallowed.

IRS claims that the mother owns the property even though we produced Quit Claim Deed dated 12/64

IRS has assessed Taxpayer $3933. With rental income of $22,700 it is logical to assume Taxpayer owns property valued at $224,550.

The interview with D. Svatos 10/80 appeared to be a witch-hunt, conducted with a lot of sarcasm not normally encountered.

After the interview with Svatos, I talked to Ed Kaposey, Acting Chief of Auit. It was his opinion that the prior years returns were good substantiation and should be used as a basis for the rentals.

After the interview with Kaposey, I called Svatos' supervisor to request a change of auditors. I called several times and left messages but she didn't return the call.

The position of IRS in this particular audit appeared to be capricious and arbitrary.

We requested additional conferences but these were denied.

If you can help this taxpayer in any way, we would appreciate it. The taxpayer approves our bringing this to your attention.

Very truly yours,

Virginia K Cutchall

MATERIAL SUBMITTED BY NANCY AND LESTER COLLINS

Dear Senator Stevens:

I would like my experience with the I.R.S. read into the record for the hearings.

We first started getting audits in 1976 for 1974 return, granted, every audit was a little different but each one always included the same item-"Unreimbursed Business Expenses."

In 1976 for 1974 we had some receipts not accepted for deductions for one reason or another and I think we ended up paying something like $67.00 added taxes. That was okay, we could live with that. 1975 return was not audited. 1976 return was audited and for unreimbursed business expenses was totally acceptable, and no adjustments were necessary. Our 1977 return was audited, and again, you will see, we were asked to verify our deductions, and again some receipts were disallowed - this time it seems our recordkeeping was supposedly not good enough, so again some receipts were disallowed because they didn't have all the required information on them. Our 1974 and 1976 receipts were kept in the same way and they were accepted, but now this auditor says if we wanted the deductions for certain items we must follow certain rules. Why didn't they tell us this in 1974 and 1976 audits? We ended up paying $72.00 additional taxes for 1977. Our 1978 return we weren't audited. Our 1979 return is being audited now and this time I've tried to follow every one of their rules and requests. The first auditor didn't allow deductions as they didn't apply properly, and I disagreed and requested second hearing which is where I was told the business should have reimbursed us. This year I.R.S. has told us we should go to tax court for our deductions, as they are claiming they are business expenses and the business should have reimbursed us, and I.R.S. is disallowing every deduction for business. I told the auditor our business is a small growing business, and all the money we can possibly spare stays in the business for more inventory. The auditor explained that my husband made $8,000.00 in 1979, he therefore could afford for the business to reimburse him, and recommends tax court as next step. Now, Senator Stevens, we all know how bad 1979 was on small businesses, especially in the Mat [illegible] Valley. In Wasilla many, many businesses closed their doors [illegible] went out of business, we chose to pay some expenses out of our pocket and then deduct it off taxes, as is customary. I have been always led to believe, as I had been doing it, and it had been accepted before at my other audits, right? Right! Well, this year I'm wrong.

I.R.S. informs me now if I want to keep the deductions I must now find a court case and then I could keep the deductions.

So as it stands now, I'm very confused, I do one thing time after time and it's accepted, and then all at once it is no longer accepted.

I wish to remain an American citizen, proud of my country, but when it is run in this fashion, I don't feel so American or proud. We work very hard trying to make a living and then have the rug pulled out from under us doesn't feel so good. I certainly hope you and your colleagues will certainly write up some new legislation to curtail the I. R. S. policies and practices and get down to BASICS once again. If the country could only work it out to $100.00 per person, no loopholes, no deductions, just a flat fee for every living soul in America, I think you would get 100% compliance and eliminate I.R.S. altogether.

Please help us, somehow. Thank you for listening to me, and holding these hearings.

Sincerely,

Nancy & Lester Collins

Internal Revenue Service
District Director

Department of the Treasury
1105-6th Street
Eureka, CA. 95501

Date: August 23, 1976

Tax Year(s):
1974
Day and Date of Appointment:
Thursday, September 23, 1976
Time: @ 1:00 P.M.

Place of Appointment: 1105 6th St.
Eureka, CA 95501
Room Number:
Room E
Contact Telephone Number:
(707) 443-6112
Appointment Clerk:
Carol Wilson
Office Audit Group 2343E
TAX AUDITOR: Richard Green

94211-109-03706-5 562-48-9949 1974
LESTER E & NANCY L COLLINS
791 SCHOOL RD
MCKINLEYVILLE CA 95521

We are examining your Federal income tax return for the above year(s) and find we need additional information to verify your correct tax. We have, therefore, scheduled the above appointment for you. If you filed a joint return, either husband or wife may keep the appointment, or you may have someone represent you or accompany you. An attorney, a certified public accountant, an individual enrolled to practice before the Internal Revenue Service, or the person who prepared the return and signed it as the preparer, may represent or accompany you.

We would appreciate your bringing to our office the records you used as a basis for the items checked at the end of this letter so we can discuss them with you.

The enclosed Information Guides will help you decide what records to bring. It will save you time if you keep together the records related to each item. Please bring this letter also.

Taxpayers are required by law to substantiate all information reported on their returns when requested. If you do not keep this appointment and do not arrange another, we will have to proceed on the basis of the information we have.

About the examination and your appeal rights—

We realize some taxpayers may be concerned about an examination of their tax returns. We hope we can relieve any concern you may have by briefly explaining why we examine, what our procedures are, and what your appeal rights are if you do not agree with the results.

We examine returns to verify the correctness of income, exemptions, and deductions. We find that the vast majority of taxpayers are honest and have nothing to fear from an examination of their tax returns. An examination of such a taxpayer's return does not suggest a suspicion of dishonesty or criminal liability. In many cases, the taxpayer's return is either closed without change in reported tax liability or the taxpayer receives a refund. However, if taxpayers do not substantiate items when requested, we have to act on available information that may be incomplete. That is why your cooperation is so important.

We will go over your return and records and then explain any proposals to change your tax liability. We want you to understand fully any recommended increase or decrease in your tax, so please don't hesitate to ask questions about anything not clear to you.

If changes are recommended and you agree with the proposals, we will ask you to sign an agreement form. By signing, you will indicate your agreement to the amount shown on the form as additional tax you owe or as a refund due you and simplify closing your case.

Most people agree with our proposals, and we believe this is because they find our examiners to be fair. But you don't have to agree. If you choose, we can easily arrange for you to have your case given further consideration. You need only tell the examiner you want to discuss the issue informally with a supervisor, and a conference will be arranged immediately. If this discussion does not result in agreement, you may take your case to a conferee for still further consideration.

In addition to these District office appeal rights, you may request the Service's Appellate Division, which is separate from the District office, to consider your case. We will be glad to explain this procedure and also how to appeal outside the Service to the courts.

We will also be happy to furnish you a copy of our Publication 556, Audit of Returns, Appeal Rights and Claims for Refund, which explains in detail our procedures covering examinations of tax returns and appeal rights. You can get a copy of this publication by writing us for it or by asking for it when you come to our office.

Your appointment is the next step. We will consider the appointment confirmed if we do not hear from you at least seven days before the scheduled date. We will make our examination as pleasant and brief as possible and will welcome any questions you raise.

Please contact us if you have any questions. Thank you for your cooperation.

Sincerely yours,

H. L. Browitt

District Director

Enclosures:
Information Guides

Please bring the records to support the following items reported on your tax return:

☐ Alimony Payments
☐ Automobile Expenses
☐ Bad Debts
☐ Capital Gains and Losses
☐ Casualty Losses
☐ Child and Dependent Care Expenses
☐ Contributions
☐ Education Expenses
☐ Employee Business Expenses
☐ Exemptions
☐ Interest Expenses
☐ Medical and Dental Expenses
☐ Moving Expenses
☐ Rental Income and Expenses
☐ Sale or Exchange of Residence
☐ Sick Pay Exclusion
☐ Taxes
☐ Uniforms, Equipment, and Tools
☐ ______
☐ ______
☐ ______
☑ Partnership Expense

Form L-14 (Rev. 10-75)

Tax Year(s): 1976
Office Address: 310 K Street

7-19-77

☐ Please send us the requested information within 2 weeks from the date of this request.

☑ We have scheduled the following appointment for you. Please bring the requested information with you.

Date: August 3, 1977
Time: 3:00 Pm
Contact Telephone Number: 265-5457
Appointment Clerk: S. McLain

92211-099-01998-7 562-48-9949 92011133
LESTER E & NANCY L COLLINS
7720
PO BOX 1860
WASILLA, AK 99687 7612

Dear Taxpayer:

We are examining your Federal income tax return for the above year, and find we need additional information to verify your correct tax.

We would appreciate your making available the records you used as a basis for the items checked on the back of this letter so we can discuss them with you. These records may be receipts, canceled checks, or other documents or explanatory material, which we will return to you. Photocopies are acceptable. Please identify the records and arrange them for easy comparison with your return.

The enclosed Information Guides will help you decide what records to make available. It will save you time if you keep together the records related to each item.

Taxpayers are required by law to substantiate all information reported on their returns when requested. If you fail to do so, we will have to proceed with your case on the basis of information we now have.

About the examination and your appeal rights—

We realize some taxpayers may be concerned about an examination of their tax returns. We hope we can relieve any concern you may have by briefly explaining why we examine, what our procedures are, and what your appeal rights are if you do not agree with the results.

We examine returns to verify income, exemptions, and deductions. This does not always result in more tax due, nor does the selection of your return for examination imply dishonesty or suspicion of criminal liability. In many cases, the taxpayer's return is accepted as filed or he gets a refund. We are required to collect only the correct tax—no more and no less. But if taxpayers do not substantiate items when requested, we have to act on available information that may be incomplete. That is why your cooperation is so important.

We will go over your return and records and then explain any proposals to change your tax liability. We want you to understand fully any recommended increase or decrease in your tax, so please don't hesitate to ask questions about anything not clear to you.

If changes are recommended and you agree with the proposals, we will ask you to sign an agreement form. By signing, you will indicate your agreement to the amount shown on the form as additional tax you owe or as a refund due you and simplify closing your case.

Most people agree with our proposals, and we believe this is because they find our examiners to be fair. But you don't have to agree. If you choose, we can easily arrange for you to have your case given further consideration. You need only tell the examiner you want to discuss the issue informally with a supervisor, and a conference will be arranged immediately. If this discussion does not result in agreement, you may take your case to a conferee for still further consideration.

In addition to these District office appeal rights, you may request the Service's Appellate Division, which is separate from the District office, to consider your case. We will be glad to explain this procedure and also how to appeal outside the Service to the courts.

We will also be happy to furnish you a copy of our Publication 556, Audit of Returns, Appeal Rights and Claims for Refund, which explains in detail our procedures covering examinations of tax returns and appeal rights. You can get a copy of this publication by writing us for it or by asking for it when you come to our office.

Your appointment is the next step, if you have been scheduled for one. We will consider the appointment confirmed if we do not hear from you at least 7 days before the scheduled date. We will make our examination as pleasant and brief as possible and will welcome any questions you raise.

Please contact us if you have any questions. Thank you for your cooperation.

Sincerely yours,

District Director

Enclosures
Information Guides

Please make available the records to support the following items reported:

☐ Alimony Payments
☐ Automobile Expenses
☐ Bad Debts
☒ Capital Gains and Losses
☐ Casualty Losses
☐ Child and Dependent Care Expenses
☐ Contributions
☐ Education Expenses
☐ Employee Business Expenses
☐ Entertainment
☐ Interest Expenses
☒ Medical and Dental Expenses
☐ Moving Expenses
☐ Rental Income and Expenses
☐ Sale or Exchange of Residence
☐ Sick Pay Exclusion
☐ Taxes
☐ Uniforms, Equipment, and Tools
☐ Exemptions
☑ [illegible]

Internal Revenue Service
District Director

Department of the Treasury

Date: 13 DEC 1978

Tax Year(s): 1977
Examining Office Address: 310 K St
Room Number: 301
Contact Telephone Number: 265-5454
Appointment Clerk: Phillips
Mrs. Eshelman

92211-140-01160-8 562-48-9949 92040346
LESTER E & NANCY L COLLINS
PO BOX 1860 7837
WASILLA, AK 99687 7712

CERTIFIED MAIL

We are examining your Federal income tax return for the above year(s) and find we need additional information to verify your correct tax. Please call us at the above telephone number within 10 days to set up an appointment convenient for you.

About the records needed to examine your return—

We would appreciate your bringing to our office the records you used as a basis for the items checked at the end of this letter so we can discuss them with you.

If you filed a joint return, either you or your spouse may keep the appointment or you may have an attorney, a certified public accountant, an individual enrolled to practice before the Internal Revenue Service, or a qualified unenrolled individual represent or accompany you. If you are not present, however, your representative must have written authorization to represent you. Form 2848-D, Authorization and Declaration, may be used for this purpose and if your representative does not have copies of this form, they may be obtained from one of our offices. Also, any other individual, even though not qualified to represent you, may accompany you as a witness and assist in establishing the facts in your case.

The enclosed Information Guides will help you decide what records to bring. It will save you time if you keep together the records related to each item. Please bring this letter also.

The law requires taxpayers to substantiate all items affecting their tax liabilities when requested to do so. If you do not keep this appointment or do not arrange another, we will have to proceed on the basis of available return information.

About the examination and your appeal rights—

We realize some taxpayers may be concerned about an examination of their tax returns. We hope we can relieve any concern you may have by briefly explaining why we examine, what our procedures are, and what your appeal rights are if you do not agree with the results.

Please bring the records to support the following items reported on your tax return and its schedules:

☐ Alimony Payments
☐ Automobile Expenses
☐ Bad Debts
☐ Capital Gains and Losses
☒ Casualty Losses
☐ Child and Dependent Care Expenses
☐
☐

☐ Contributions
☐ Education Expenses
☒ Employee Business Expenses
☐ Exemptions
☐ Interest Expense
☐ Medical and Dental Expenses
☐
☐

☐ Moving Expenses
☐ Rental Income and Expenses
☐ Sale or Exchange of Residence
☐ Sick Pay or Disability Income Exclusion
☐ Taxes
☐ Uniforms, Equipment, and Tools
☐

Please bring evidence such as accounting ledgers and journals, bank statements, and cancelled checks to support the following items shown on Schedule C:

☐ All Business Expenses
☐ Bad Debts
☐ Cost of Goods Sold
☐ Depreciation
☐ Gross Receipts

☐ Insurance
☐ Interest
☐ Rents
☐ Repairs
☐ Salaries and Wages

☐ Taxes
☐ Travel and Entertainment
☐
☐
☐

Please bring evidence such as accounting ledgers and journals, bank statements, and cancelled checks to support the following items shown on Schedule F:

☐ All Farm Expenses
☐ Depreciation
☐ Feed and Seed Purchased
☐ Fertilizers, Lime
☐ Gross Receipts

☐ Insurance
☐ Inventories
☐ Labor Hired
☐ Machine Hire
☐ Other Farm Income

☐ Repairs and Maintenance
☐ Supplies Purchased
☐ Taxes
☐
☐

FORM 3468-A (REV. JANUARY 1975)	DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE **INVESTMENT CREDIT RECOMPUTATION**	SCHEDULE NO. OR EXHIBIT 1040
NAME OF TAXPAYER Lester E & Nancy L Collins		TAXABLE YEAR 1972

1. Qualified Investment, includes suspension period property:
NOTE: Includes taxpayer's share of investment in property by partnerships, estates, trusts, small business corporations, or lessors.

KIND OF PROPERTY	LINE	(1) LIFE YEARS	(2) COST OR BASIS	(3) APPLICABLE PERCENTAGE	(4) INVESTMENT (COLUMN 2 X COLUMN 3)
NEW PROPERTY	(a)	3 or more but less than 5		33-1/3	
	(b)	5 or more but less than 7	6558.15	66-2/3	4572.37
	(c)	7 or more		100	
USED PROPERTY	(d)	3 or more but less than 5		33-1/3	
	(e)	5 or more but less than 7		66-2/3	
	(f)	7 or more		100	

2. Total qualified investment (lines 1 (a) through (f), column 4)		4572.3
3. Tentative investment credit - 7% of line 2 (4% for public utility property) 10%		[illegible]
4. Carryback and carryover of unused credit(s) shown on return or as corrected		- 0 -
5. TOTAL (lines 3 and 4)		[illegible]
6. Tax shown on return or as corrected. (Do not include: self-employment, accumulated earnings, or personal holding company taxes, or recapture of investment credit)		
7. (a) Foreign tax credit	- 0 -	
(b) Retirement income credit	- 0 -	
(c)	- 0	
(d) TOTAL (lines 7 (a), (b), and (c))		- 0 -
8. Tax Balance (line 6 less line 7(d))		
9. (a) Line 8 or $25,000 whichever is lesser		
(b) ______ % of excess of line 8 over $25,000		
(c) TOTAL (lines 9(a) and (b))		
10. Recomputed investmunt credit (lesser of line 5 or line 9(c))		
11. Usused investment credit (excess of line 5 over line 10)		

REMARKS

New Prop Tape Machine	5-7 cost	429.95
Cordoba	5-7	6103.20
From Partnership	5-7 yrs	325.00
		6858.15

Form 1914
(Rev. Aug. 1974)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
COMPUTATION OF ALLOWABLE DEPRECIATION DEDUCTION ON ITEMS CHANGED

Exhibit 1040

Name of Taxpayers
Lester E. & Nancy L. Collins

Description of Property or Group and Guideline Class *(Exclude land and other non-depreciable property)*	Date acquired	Cost or other basis	Depreciation allowed or allowable in prior years	Remaining cost or other basis to be recovered after year ending ____	Method	Rate (%) or life (Years)	Depreciation Allowable Tax Years Ending 7712		
Tape Machine	3/77	429.95	-0-	429.95	SL	6	53.74		
Total depreciation deduction allowable on items changed ▶							53.74		
Depreciation deduction claimed on items changed ▶							-0-		
Adjustment - Increase or (Decrease) ▶							53.74		

Report of Individual Income Tax Examination Changes

Department of the Treasury
Internal Revenue Service

Name of Taxpayer Lester E & Nancy L Collins			
Social Security Number 62-48-5949	Year 77	Form 1040	Examining District 92
Name and Title of Person With Whom Changes Were Discussed Nancy L. Collins	Date of Report 1-15-79	Filing Status MFJ	In Reply Refer To: J.B. Eshelman

Income and Deduction Amounts Adjusted

Explanation No. (See attached)	Item Changed	Amount Shown on Return or as Previously Adjusted	Corrected Amount of Income and Deduction	IRS Ref. No.	Adjustment Increase (Decrease)
	Casualty Loss	636.70	539.70		97.00
	Employee Bus Exp	1162	789.27		372.73
	Investment Cr	—	—		—

A. Adjustment in income - increase (decrease) - (see explanation of adjustments attached)	469.73
B. Total income or taxable income reported or as previously adjusted Tax Table Income	17968.17
C. Corrected total income or taxable income	18437.90
D. Tax computed with exemptions	1965
E. Tax surcharge	- 0 -
F. **Tax credits** (retirement income, [✓ investment,] foreign, or other allowable credits) (if adjusted, see explanation attached)	457.44
G. **Self-employment tax, or tax from recomputing prior year investment credit, or both** (if adjusted, see explanation attached)	1162.00
H. **Corrected tax** (line D plus line E plus line G less line F)	2669.56
I. Tax shown on return or as previously adjusted	2596.96
J. **Deficiency** (increase in tax before credits, line H less line I)	72.60
K. **Overassessment** (decrease in tax before credits, line I less line H)	- 0 -
L. Net prepayment credits, excess FICA, RRTA, nonhighway gasoline tax credit, regulated investment company undistributed capital gain credit, previous assessments, refunds, and credits (if adjusted, see schedule attached)	2596.96
M. **Balance due** (line H less line L)	72.60
N. **Overpayment** (line L less line H)	
O. ~~Penalties if any (see explanation attached)~~ Plus interest	3.27

Although this report is subject to review, you may consider it as your notice that your case is closed if you are not notified of an exception to these findings within 30 days after a signed copy of this report or a signed waiver, Form 870, is received by the District Director. If you agree, please sign one copy of this report, and return it in the enclosed envelope. Keep the other copy with your records.

Total 75.87

Consent to Assessment and Collection-I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report: therefore, I consent to either:

(1) The immediate assessment and collection of the balance due shown on line M, plus any interest due on this tax, and also any penalties shown on line O, or

(2) The overpayment shown on line N, plus any interest and adjusted by any penalties shown on line O.

Nancy 1-15-79

Your signature Date Spouse's signature, if a joint return was filed Date

FORM 1902-E (REV. 6-77)

Department of the Treasury
Internal Revenue
Service Center
OGDEN, UT 84201

98798 21

Date of This Notice
JUNE 4, 1979 89

Taxpayer Identifying Number
562-48-9949 DO

Document Locator Number
92247-037-00301-9

◄ If you inquire about your account, please refer to these numbers or attach this
◄ notice

Form Number Tax Period
1040 DEC. 31, 1977

DO 7921

LESTER E & NANCY L COLLINS
PO BOX 1860
WASILLA AK 99687

2

STATEMENT OF ADJUSTMENT TO YOUR ACCOUNT

OVERPAYMENT ON ACCOUNT BEFORE ADJUSTMENT		$75.87
ADJUSTMENT COMPUTATION		
TAX- INCREASE	72.60	
INTEREST CHARGED	3.27	
NET ADJUSTMENT CHARGE		75.87
BALANCE DUE		NONE

Internal Revenue Service
District Director

Department of the Treasury

230 MAY 4th

Date: 20 MAR 1981

Tax Year(s): 1979
Examining Office Address: 310 'K' St. Anchorage
Room Number: 301
Contact Telephone Number: 271-4256
Appointment Clerk: B. Crandall

92211-180-00530-0 562-48-9949 92080935
LESTER E & NANCY L COLLINS
8045
BOX 1860
WASILLA, AK 99687 7912

Ms. SVATOS
~~4/20/~~81 10:30 Am

We are examining your Federal income tax return for the above year(s) and find we need additional information to verify your correct tax. Please call us at the above telephone number within 10 days to set up an appointment convenient for you.

About the records needed to examine your return—

We would appreciate your bringing to our office the records you used as a basis for the items checked at the end of this letter so we can discuss them with you.

If you filed a joint return, either you or your spouse may keep the appointment or you may have an attorney, a certified public accountant, an individual enrolled to practice before the Internal Revenue Service, or a qualified unenrolled individual represent or accompany you. If you are not present, however, your representative must have written authorization to represent you. Form 2848-D, Authorization and Declaration, may be used for this purpose and if your representative does not have copies of this form, they may be obtained from one of our offices. Also, any other individual, even though not qualified to represent you, may accompany you as a witness and assist in establishing the facts in your case.

The enclosed Information Guides will help you decide what records to bring. It will save you time if you keep together the records related to each item. Please bring this letter also.

The law requires taxpayers to substantiate all items affecting their tax liabilities when requested to do so. If you do not keep this appointment or do not arrange another, we will have to proceed on the basis of available return information.

About the examination and your appeal rights—

We realize some taxpayers may be concerned about an examination of their tax returns. We hope we can relieve any concern you may have by briefly explaining why we examine, what our procedures are, and what your appeal rights are if you do not agree with the results.

Please bring the records to support the following items reported on your tax return and its schedules:

☐ Alimony Payments
☐ Automobile Expenses
☐ Bad Debts
☐ Capital Gains and Losses
☐ Casualty Losses
☐ Child and Dependent Care Expenses
☐ Travel Reimbursement Expenses
☐ Gambling Losses
☐ Contributions
☐ Education Expenses
☑ Employee Business Expenses
☐ Exemptions
☐ Interest Expense
☑ Medical and Dental Expenses
☐ Miscellaneous Deductions
☐ Moving Expenses
☐ Rental Income and Expenses
☐ Sale or Exchange of Residence
☐ Sick Pay or Disability Income Exclusion
☐ Taxes
☐ Uniforms, Equipment, and Tools
☐ Travel & Entertainment

Please bring evidence such as accounting ledgers and journals, bank statements, and canceled checks to support the following items shown on Schedule C.

☐ All Business Expenses
☐ Bad Debts
☐ Cost of Goods Sold
☐ Depreciation
☐ Gross Receipts
☐ Insurance
☐ Interest
☐ Rents
☐ Repairs
☐ Salaries and Wages
☐ Taxes
☐ Travel and Entertainment
☐
☐
☐

Please bring evidence such as accounting ledgers and journals, bank statements, and canceled checks to support the following items shown on Schedule F:

☐ All Farm Expenses
☐ Depreciation
☐ Feed and Seed Purchased
☐ Fertilizers, Lime
☐ Gross Receipts
☐ Insurance
☐ Inventories
☐ Labor Hired
☐ Machine Hire
☐ Other Farm Income
☐ Repairs and Maintenance
☐ Supplies Purchased
☐ Taxes
☐
☐

Page 1 of ______ Pages

Form 4549 (Rev. Sept. 1979)

Department of the Treasury - Internal Revenue Service

Income Tax Examination Changes

Return Form No. 1040

Name and Address of Taxpayers Leslie & Nancy Collins Box 1860 Wasilla AK 99687	S.S. or E.I. Number 552-48 9949	Filing Status M - J	
	Person Examination Changes Were Discussed With	Name and Title Nancy Collins	
1. Adjustments to Income	Year: 1979	Year:	Year:
a. Employee Business Expense	5756		
b. Medical Expense	457		
c.			
d.			
e.			
f.			
g.			
2. Total Adjustments	6213		
3. Adjusted Gross, Taxable or Tax Table Income Shown on Return or as Previously Adjusted	11975		
4. Corrected Adjusted Gross, Taxable or Tax Table Income	18188		
5. Tax Table B - 5 exemptions	1672		
6. Alternative Tax, if Applicable (From page ______)			
7. Tax Surcharge			
8. Corrected Tax Liability (Lesser of line 5 or 6 plus line 7)	1672		
9. Less Credits (Specify) a [illegible]	96		
b Energy	108		
c			
10. Balance (Line 8 less total of lines 9a through 9c)	1468		
11. Plus a. Tax From Recomputing Prior Year Investment Credit			
b. Self-Employment Tax adjusted	676		
c			
12. Total Corrected Income Tax Liability (Line 10 plus total of lines 11a through 11c)	2144		
13. Total Tax Shown on Return or as Previously Adjusted	536		
14. Deficiency (Increase in tax before credit adjustments, line 12 less line 13)	1608		
15. Overassessment (Decrease in tax before credit adjustments, line 13 less line 12)			
16. Adjustments to Prepayment Credits			
17. Balance Due (Line 14 or 15 adjusted by line 16) Plus Interest	1608		
18. Overpayment (Line 14 or 15 adjusted by line 16)			
19. Penalties, if any (See explanation)			

Other Information

Examiner's Signature Dorothy Sexton	District Anchorage 92	Date 6-18-81

Consent to Assessment and Collection - I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. Therefore, I give my consent to the immediate assessment and collection of any increase in tax and penalties, and accept any decrease in tax and penalties shown above, plus any interest as provided by law. It is understood that this report is subject to acceptance by the District Director.

NOTE: If a joint return was filed, both taxpayers must sign.	Signature of Taxpayer	Date	Signature of Taxpayer	Date
By		Title		Date

Form 4549 (Rev. 9-79)

FORM 886-A (REV. APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT 1
NAME OF TAXPAYER Lester & Nancy Collins		YEAR/PERIOD ENDED 1979

Based on data available the following adjustments are proposed:

1. Employee business expense was adjusted as follows:

	Return	Audit	Adjust
Telephone. Amount verified was for personal home phone bill for entire year of 1979. No business purpose for claiming the entire phone bill was established other than that the alarm system hooked up to the gun shop would cause the home phone to ring. There was no additional charge made by the phone company for this. The cost of your total phone bill for the year is a personal living expense and is not deductible.	416	0	416
Promotional Entertainment. The amount verified for meals was $78.00 The meal check slips were for a single meal for $69.33 of the total amount. The remainder was for meals for two or more. There was no business purpose established for the expense, and the requirements of IRS Code Section 274 were not met. Based on data available, the expense for the single meals was not to entertain business customers, but was for your personal lunch expense.	844	0	833
Gifts and promotional items. The cost of wedding gifts, house warming gifts, baby gifts, games, books, and gift certificates are not allowable as employee business expense for the Chimo Gun Shop partnership. No relationship between the giving of the gifts and business promotion was established. The expense of giving gifts is a personal living expense and is not deductible. No verification was presented which would establish that the giving of these gifts was an ordinary and necessary business expense of the partnership, and if the gifts were business expense, they should be claimed by the partnership return. The cost of repairing another person's car damaged in an accident is not deductible as promotional or entertainment expense.			
Postage. Receipts for $119. was presented for stamps and other mailing expense. No business purpose was presented for this expense, and no verification that the expense was not reimbursed by the partnership.	185	0	185
Dues. The membership dues for NRA and one banquet and membership for Greenwing was allowed. The cost of the membership and banquet dinner for Mrs Collins and your children was not allowed as an ordinary and necessary business expense.	58	38	20

FORM 886-A (REV. APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT 2
NAME OF TAXPAYER Lester & Nancy Collins		YEAR/PERIOD ENDED 1979

	Return	Audit	Adjust
Publications allowed as verified	37	37	0
Supplies. Expense of promotional calendars and pens and envelopes allowed as verified	39	59	(20)
Lodging. No business purpose was established for the lodging expense.	20	0	20
Store Music. No business expense was established for the purchase of Giants of Jazz and other sets of records.	104	0	104
Wall decoration. No data was presented	77	0	77
Suburban	1768	0	1768
Cordoda	1599	0	1599
Depreciation	754	0	754

The business use of the surburan and cordoba were not established. Inspection of the partnership return for Chino Guns showed 4 vehicles were depreciated as transportation equipment and a total of $3,444 was claimed as vehicle expense. Chino Guns is a two man operation. No verification was presented that would verify that the partnership was required to use 4 vehicles on the partnership return and also the use of two vehicles on the return of one partner. Mrs Collins refused to identify the vehicles listed on the partnership return. No business use of the suburban or cordoba was established. No mileage or trip log was maintained to verify any claimed usage. The amount claimed for vehicle repairs, fuel, oil, insurance and plates is not allowable because you have not established that this is an ordinary and necessary expense, and that the expense has not been duplicated on the partnership return. Personal commuting expense and personal driving expense are not deductible items. The depreciation on the vehicle and tape machine were not allowed. You did not establish that the tape machine was an ordinary and necessary business expense, or that the cordoba is used as a business vehicle.

FORM 886-A (REV. APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT 3
NAME OF TAXPAYER Lester & Nancy Collins		YEAR/PERIOD ENDED 1979

1-b Medical expense was adjusted as shown on attached form 4109.

Self employment tax was adjusted to include the adjustments made to partnership income.

Net income per return	2594	
adjustments to income	5756	
Corrected net income	$ 8350	X .081 = $676 self employment tax.

Form **4109**
(Rev. July 1977)

Computation of Medical and Dental Expense Adjustment

Statement or schedule: A-1

Name: [illegible]	Tax Year Ended	
	1979	
1. One-half *(but not more than $150)* of insurance premiums for medical care	38	
2. Medicine and drugs expense shown on return or as previously adjusted	313	
3. Adjustment *(see explanation below)*	<92>	
4. Medicine and drugs expense as corrected	221	
5. 1% of adjusted gross income shown on return or as corrected	<224>	
6. Balance *(line 4 less line 5)*	-0-	
7. Other medical and dental expenses shown on return or as previously adjusted *(Include balance of insurance premiums for medical and dental care not entered on line 1)*	1282	
8. Adjustment *(see explanation below)*	123	
9. Other medical and dental expenses as adjusted	1159	
10. Total *(line 6 plus line 9)*	1159	
11. 3% of adjusted gross income shown on return or as corrected	13	
12. Balance *(line 10 less line 11)*	436	
13. Medical and dental deduction allowable *(line 1 plus line 12)*	474	
14. Medical and dental deduction shown on return or as previously adjusted	931	
15. Adjustment — increase or decrease	457	

Corrected Adjusted Gross Income

16. Adjusted gross income shown on return or as previously adjusted	16,673	
17. Add items Excess [illegible] expense Schedule	5756	
18. Deduct items Schedule		
19. Corrected adjusted gross income	22429	

Explanation of adjustments

X.03
673.

Medicine [illegible] allowed as verified
Doctors, dental, hospital allowed as verified
Dental insurance [illegible] verified paid for [illegible]
Home [illegible] not accepted.

Form 886-A
(Rev May 1980)

Department of the Treasury — Internal Revenue Service
Explanation of Items

Schedule No or Exhibit
1040

Name of Taxpayer
LESTER E & NANCY L COLLINS

Year/Period Ended
7912

Supervisory conference;

Telephone; in order to be allowed a deduction for the business use of you r personal phone you must provide evidence to show the percentage business use. Since the requirement has not been met there is no allowable deduction.
Promotional entertainment; in order to be allowed on your individual return for an expense of the partnership you must provide evidence to show that it is an ordinary and necessary expense of your trade or business. Since your business was a partnership the expenses should appear on the partnership return. If they do not(which has not been shown) then that is where the expense belongs,
Then you must meet the recordkeeping requirements under code section 274. Which include providing reciepts, and or cancelled checks to verify the date, amount, person, business purpose for each expenditure. Since these requirements were not met there is no allowable expense.
Gifts and promotional Items: See Promotional entertainment above. In the case of business gifts if they are ordinary and necessary then the amount is limited to $25.00 per year per person. You have not shown that these were ordinary and necessary, nor that they were other than personal.
Postage; In order to be allowed an expense of the partnership on your individual return you must show that it is ordinary and necessary and not reimbursable on your individual return., Since these requirements have not been met there is no allowable deduction.
Dues; the expense of Mrs Collins, who is not one of the partners, and of the childeens banquet dinner has not been shown to be ordinary and necessary.
Lodging; Since you did not establish a business purpose there is no allowable deduction.
Store Music see lodging above.
Wall decoration; was not verified.
Suburban: and Cordoba; Since this was an expense of the partnership you must show that it was ordinary and necessary and not reimbursable by the partnership and that the expense was not duplicated on the partnership return. Since you have not met these requirements there is no allowable deduction.
Depr4ciation on tape machine was not shown to be ordinary and necessary and not reimbursable by the partnership and is therefore not allowable.

Since the auditors determination is not changed and you do not agree it is recommended that you request an appellate division hearing so that you can exercise your appeal rights.

My receipts weren't even examined properly they looked at most of them and drew their own conclusions, not even listening to what I had to say.

ARTICLE BY ROBERT MCCURRY REPRINTED FROM TEMPLE TIMES

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ROBERT MCCURRY, Pastor

MARXIST GOALS THREATENED BY TAX REVOLT

by Robert McCurry

Knowledgeable Americans, including Christians, are not anarchists. No Christian should object to paying a just tax in support of a Scriptural civil government as ordained by God to enforce His law and administer justice on earth. And since the U.S. Constitution and the Bill of Rights is America's "Caesar" there is no conflict with Christians "rendering unto God" and "rendering unto Caesar" their proper due. But one of the major crises facing America today is that too few people know what is God's and what is Caesar's because they are willfully ignorant of both the Scriptures and the U.S. Constitution.

The pilgrims who fled to America fled a tyranny that included, among other things, unjust taxation. Yet when once established on these shores they willingly taxed themselves, but the tax they imposed was a poll tax. As William Bradford records, "Towards the maintenance of government and public officers of the said colony, every male above the age of sixteen years shall pay a bushel of Indian wheat, or the worth of it, into the common store."[1] Christ, Himself, set an example by paying a poll tax.

In times of unscriptural tyranny, tyrants have usually found that knowledgeable Christians were 'trumpets of sedition.' According to Sidney Horowitz, Ph.D., Christians of the 1st century "suffered some severe persecutions by Nero and also by the 'five good emperors' because they refused to serve in the army, pay taxes, and worship the emperor."[2] The real cause of their persecution, of course, was because they declared Jesus Christ as Lord. God and the Gospel is the only issue.

Indeed, just prior to the "Revolutionary War' colonial governors complained to England that the pulpits were fountains of sedition. From the Puritans of John Hampdon's day to their sons at the Boston Tea Party, (knowledgeable) Christians have ever been the nemesis of unjust taxation"[3] and despotic governments.

But, alas! today's Christians are best known for their submission to evil. Alas! Alas! God and His Word are dishonored, His earth taxed, His tithes stolen, and the fruits of the labor of the people plundered by dishonest and self-serving politicians and other public servants.

PROGRESSIVE INCOME TAX AND THE COMMUNIST MANIFESTO

It was Karl Marx, that prophet of the overthrow of Christian civilization, that called for a heavy, progressive income tax in the Communist Manifesto Back in 1848, in order to replace and repeal the tithe, the pillar of Christian society, and to finance a statist program of anti-Christianity

"In 1913, almost 300 years after the landing of the Pilgrims and 137 years after the founding of the Republic, America submitted to the curse of the Marxist income tax, an income tax that was as alien to the faith of our forefathers and the nation that they founded and as radical a departure from historic Christian civilization as it was unscriptural."[4]

A BRIEF LOOK AT HISTORY

In a classic article on The Revolutionary Consequences of the Income Tax, Mutual Network news commentator Jeffery St. John said:

"When the U.S. Constitution was written and ratified, the principle of commodity or non-direct taxes was included and served the United States from 1789 until the adoption of the Sixteenth Amendment in 1914. An income tax was briefly imposed by the Lincoln dictatorship during the U.S. Civil War but later repealed; and an income tax enacted in 1894, largely the consequence of populist and labor-Socialist agitation, was later struck down as unconstitutional by the U.S. Supreme court. A little less than twenty years later the man who would become Franklin D. Roosevelt's Secretary of State during most of the New Deal, Cordell Hull, drafted the prototype of the Income Tax Act under which we continue to suffer.

"The Sixteenth Amendment was not enacted as an economic necessity, since all our fiscal needs were met without one, but as a social reform to break down the barriers of wealth between the very rich and the very poor.

"The adoption of the Sixteenth Amendment, as Woodrow Wilson was half way through his first term, was followed by the Seventeenth Amendment allowing for direct election of U.S. Senators. Both Amendments served to shatter the powers of the separate states and cleared the road to the revolution that has rolled on for the past sixty-six years. The creation of the Federal Reserve by Wilson and others completed the framework for the emergence of the Welfare-Warfare State that Wilson initiated with World War I and Roosevelt completed in the 1930's and during World War II."[5]

Professor von Mises said thrity years ago that "progressive taxation of income and inheritance" is incompatible with preservation of the market economy. "It can at best," he wrote, "be considered a means of bringing about Socialism. Looking back on the evolution of the income tax from 1913 to its present day, one can hardly believe that the tax will soon absorb 100 percent of all surplus above the average height of the common man's wages."[6]

The income tax is an indispensable feature of the collectivist State that coercively subjects the productive to the whims of the 'humanitarian' politician who, in turn, creates a dependency on the part of the nonproductive as a political insurance policy to return him or her to public office while enlarging the power of the State over all citizens. 'The legal impregnability of private property,' writes Joseph s. Duarte in The Income Tax is Obsolete, 'was breached by the 16th Amendment. The income tax law has progressively deprived the private sector of its power and importance, reduced its size and brought it under domination and control of government.'

"In fact, over the last sixty-six years a far reaching, bloodless revolution has been effected by using the Sixteenth Amendment. It has left no economic, social, or political institution untouched while making possible the massive and unaccountable bureaucracy we have in Washington today. Without the income tax this would have been next to impossible. However, in the last six decades evidence and experience have been accumulating that the income tax has hobbled if not undermined traditional American values like the work ethic, contributed to fracturing of the American family, crippled private economic enterprise, and erected over the lives and liberties of us all a tyranny justified in the name of social justice."[7]

INCREASES AND NEED

The progressive income tax has increased over six-hundred seventy-six times since its adoption, rising from an original two percent to eighty percent in the highest bracket.

There is little justice for the American taxpayer who, according to the Washington-based Tax foundation, had to labor in 1979 from January first to May sixth just to pay taxes. That date was advanced for 1980 and will advance again this year.

"In 1980 the federal government expects to collect $227.3 billion in income taxes for an official Budget of $531 billion. This means we could completely abolish the income tax and with a balanced Budget, still have enough money to run the government at same level as in 1974 when outlays were $269.6 billion."[8]

"THE TAX REVOLT"

In February 1981 the media reported the story, which reliable sources tell me was actually a press release by the IRS, that there are "thousands of auto workers n Flint, Michigan who are refusing to file income tax returns and falsifying withholding forms in a (Tax) revolt."

IRS manager of criminal investagations in Flint, Leonard Nawrocki said, "This is one of the biggest tax protest movements in the country."

Evidently, Nawrocki hasn't been paying attention or else he is deliberately attempting to deceive the American people into believing that the auto workers in Flint are a new and unique minority of Americans involved in a wildcat "tax revolt."

The facts tell a different story.
*The April 10, 1978 issue of Newsweek's cover showed a 1040 tax form being burned under the headline: "Burned Up Over Taxes.
*The April 1978 Nation's Business carried a story on: "The Taxpayer Fights Back-Angry citizens are buffeting government at all levels with protests against oppressive taxation."
*In 1978, Time, U.S. News and World Report and other major publications carried feature articles on the "tax revolt"
*The Atlanta Journal reported on October 18, 1978 that "more than 10 million Americans are refusing to pay their income tax. Of this number over 100,000 have challenged the government directly by making a public protest of their refusal to pay.

"Former Internal Revenue Service Commissioner Johnnie Walters said of this tax rebellion, "We're headed for trouble. This is a trend, this is frightening, and we must do something about it."
*The Las Vegas Sun did a ten-part series on "Sun Audits IRS" in 1979. It reported in the last article entitled: Citizens to IRS: Reform Or Revolt:

"The present tax system is one of organized insanity, administered by the asylum's inmates. It's unforgiveable offense is what this bureaucratic madness has done to American citizens: It has turned an honest people into a nation of cynics who view their own government with fear and hatred.

"The legal restraints of orderly government have been smothered under millions of words. As a consequence, the IRS asserts powers that Congress never legislated. The result is official anarchy and tyranny.

"This country does not like and will not endlessly tolerate tyrants. It declared its independence because it would not accept taxation without representation. After 200 years, it has learned that taxation WITH representation can be equally intolerable.

"There are two choices-rebellion and reform. This country is now far down the road toward rebellion, and the revolt is beyond the point where the "IRS can cope with it.

"There are not enough tax agents to police the rebels, nor enough courts to convict them nor jails to house them. The IRS is reduced to picking and choosing the cases it will pursue. This breeds further cynicism, as citizens see one neighbor pinioned on the tax rack while another goes free. Such injustices will inevitable make tax rebels of us al

"Reform is the only alternative, unless Congress acts-and acts now-to simplify and make more equitable its revenue collection system, it may soon face a massive, nationwide tax revolt." (Emphasis added.)

It is obvious that the situation in Flint, Michigan is far from being an isolated wildcat "tax revolt."

Reliable sources report that their cause and action is gaining sympathy, support and strength across America.

DEPENDANTS OR ALLOWANCES?

One of the recurring statements in the news reports is that the auto workers in Flint are claiming up to "99 dependants" on their W4 (withholding) certificate to prevent tax deductions from their salaries. However, it is interesting to note that the word "dependants(s)" does not even appear on the W4 form. Employees claim allowances not dependants. The instructions clearly show that a person may have sufficient allowances to prevent the withholding of taxes. Too, millions of Americans do not incur any income tax liability.

It is the responsibility of every citizen to be knowledgeable of their rights, privileges, and protections guaranteed by the U. S. Constitution.

THE TAX REVOLT AND THE U.S. CONSTITUTION

The Las Vegas Sun reported: "Congress created the IRS monster. Only congress can take it off our backs.

"When the founders of this country wrote the U.S. Constitution, they devoted only 32 words to the method whereby the new nation would finance its government. The passage declared, in language anyone could understand:

"The congress shall have the power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.."

"So alien is an income tax to our Constitutional republic," writes Louis DeBoer, "that it required a Constitutional amendment to implement it after it had already been struck down as unconstitutional by the Supreme Court in the last century. But it would seem a basic political axiom that the Constitution can not be amended to destroy the Constitution, and granting unlimited taxing power to raise unlimited finances is certainly destructive of a Constitution that had the limitation of government to Scriptural bounds as its chief purpose.

"Nevertheless, even if one granted a quasi legality to the income tax itself, the method of collection is a massive violation of all Constitutional right.

"For instance, to resort to withholding tax by payroll deduction is unconstitutional in that: (1) it represents a bill of attainder prohibited in Article 1, Section 10, clause 1; (2) it deprives the citizen of his property without due process of law, prohibited by Amendment 5; (3) it represents involuntary servitude on the part of the employer, who is compelled to calculate and collect the tax on behalf of the government, in violation of Amendment 13.

"Being required to file a 1040 form with the IRS under penalty of perjury and which can be used against you in a criminal prosecution is a violation of the 5th Amendment protection against self-incrimination or testifying against one's self.

"Being required to keep records and to submit them to the IRS upon demand is both involuntary servitude and a violation of the 4th Amendment 'right of the people to be secure in their persons...papers, and effects against unreasonable searches and seizures'.

'While the Constitution establishes a separation of powers, the IRS makes its own laws, administers them and enforces them in their own tax courts. Such unconstitutional and despotic tribunals bypass all the constitutional protections built into the regular judiciary.

"Here one's accusers are also one's judges, and one is held to be guilty till he can prove himself innocent of the charges against him. Here there is no due process, or jury trial.

"Here one is merely informed that he is guilty of owing so much taxes, interest and penalties. To defend one's self or even to investigate these charges is to antagonize the judges.

"Here a branch of the executive dispenses illegal warrants, summons, and subpoenas. Here there is only Soviet justice, where the verdict is in long before the trial which is only held so that the victim will have an opportunity to confess and submit."[9]

THE "TAX REVOLT" AND THE SCRIPTURES

The knowledgeable Christian knows that taxation originated not with man and governments, but with the sovereign God of heaven. Therefore, it is fundamentally a Scriptural and spiritual matter and not a "secular" and "Political" matter as the religious and political secular humanists would have us believe. The proper point of beginning in knowing and correctly understanding the truth about the subject is with God and His Word-not with man and his idea ideas.

Secular humanists vehemently insist that God's true preachers "stay out of politics" and refrain from preaching, teaching and instructing the people on government. But if preachers will not proclaim truth and instruct in righteous living-who will?

Scripturally knowledgeable Christians who live in obedience to God's Word take dominion over ignorance and darkness because they are the "light of the world"; they take dominion over corruption and decay because they "are the salt of the earth." Dominion Christians are a constant menace to the efforts and goals of secular humanism and a tyrannical and despotic government!

Because America, as Israel of old, has disobeyed and rejected God, denied His sovereignty, exchanged His authority for man's government, replaced His royal and holy Law for man's inferior "laws" - God's judgement is upon the nation.

Part of Israel's punishment would be: An oppressive ten percent taxation would be levied against the people, and their property and possessions would be confiscated for the king's bureaucracies (I Samuel 8).

The fact that Americans are now taxed, including the inflation factor, in excess of sixty-five percent, indicates the compounded wickedness of the nation.

True and knowledgeable Christians are not "tax protestors." They do not object to a Scriptural (poll) tax to finance a Godly civil order. What they do-and must, under God,-object to, is all sin and wickedness and corruption and oppression and destruction perpetuated by public servants.

REPENT OR PERISH

The cause of the problem of all oppressive and destructive taxation is SIN!

America must repent or perish. Repentance must begin with the Christian. There must be obedience to God in all things. Godliness must not merely be professed-it must be applied every day in the real world.

Salvation is of the Lord. Apart from Jesus Christ there is no salvation. "Repent ye, and believe the Gospel" (Mark 1:15).

"TAX REVOLT" THREATENS MARXIST GOALS

"In the 20th century, taxation began to serve as an instrument of social and economic change," writes R. J. Rushdoony. "Thus taxation no longer serves simply to support civil government but also to reorganize society in terms of leveling and equalitarian concepts.

"In this newer concept of taxation, the new established religion of the United States, humanism, came to focus. God being denied as the source of the law, law has moved steadily to enforce a totalitarian and equalitarian principle."[10]

"Increasingly, the function of taxation is to re-order society. By means of property, inheritance, income, and other taxes, wealth is confiscated and redistributed.

"The power to tax is in the modern world the power to destroy. It is no longer the support of law and order. The more taxes increase in the twentieth century, the less law and order men have, because taxation serves the purpose of promoting social revolution."[11]

It is obvious that a drastic reduction or abolishment of all unGodly and unconstitutional taxation would be a death blow to Marxist goals for America's destruction.

MAKING PRACTICAL APPLICATION

"The adoption of Proposition 13 in California demonstrated that, despite the opposition of the Establishment in both political parties, peaceful and Constitutional change could be effected to stop confiscatory taxation and cut Big Government off at the pockets. Although Proposition 13 was not without its shortcomings, the ability to organize against the entrenched Establishment is a great and thrilling accomplishment. The subsequent encouragement given to other like-minded groups across America is even greater importance."[12]

The Legislatures of Wyoming, Texas, Nevada, Louisiana, Georgia, South Carolina, Mississippi, and Arizona have already approved House Joint Resolution 23, popularly known as the "Liberty Amendment." It calls for an amendme to the U.S. Constitution that will repeal the Sixteenth Amendment (income tax amendment) and the abolishment of the Internal Revenue Service.

Congressman George Hansen (R-Idaho) says: "We have, almost inadvertently, created an agency within the government at war with our freedoms. If it (IRS) is not curbed, in our view, if it is not destroyed, it will inevitably control us all. The Internal Revenue Service was not brought down from Mount Sinai engraved on tablets of stone. It can be controlled or abolished at the clearly expressed will of the people."13

For more information on the Liberty Amendment write: Liberty Amendment Committee, U.S.A., P.O. Box 2386, El Cajon, Calif. 92021.

Wake up preachers! Wakeup, Christians! Wake up America! Wake up! Stand up and be seen! Spea up and be heard! Get involved in saving your family, the nation and freedom!
Well, what are you waiting for?

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What's Wrong With the Income Tax

The nation's former chief tax collector offers some suggestions for improving our tax laws

AN INTERVIEW WITH MORTIMER CAPLIN
former Commissioner of Internal Revenue

Q. Mr. Caplin, are major changes and improvements needed in the federal income-tax system?

A. Yes. The 1962 and 1964 revisions were steps forward, but there is a long way to go. For one thing, we need to simplify tax laws. This was particularly impressed upon me during my 3½ years as a tax administrator. In a system based upon voluntary compliance, the laws must be understandable to be complied with. If we want higher compliance, we need simplification.

Q. What sort?

A. The ultimate in simplicity would be something approaching an "adjusted gross income tax"—one with no, or with greatly limited, deductions and exemptions.

Q. And lower tax rates?

A. Yes. I think we could raise just as much revenue if we were to adopt something approaching an adjusted gross income tax—coupled, of course, with lower rates.

Q. How much lower?

A. That depends upon how far you want to go, in lessening deductions and eliminating preferential treatment to create a bigger pool of income subject to tax. If you increase that pool substantially, your rate could change a great deal. The tax section of the American Bar

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Association has been studying a plan of this sort with a proposed rate structure running from 10 to 40 percent. I suggest 10 to 50 percent as a feasible range. That's compared with 14 to 70 percent under the tax law voted this year.

Q. Does this mean eliminating all the deductions we now have?

A. Most of the deductions for such personal expenses as interest, contributions, local and state taxes, and the like would be eliminated. Business expenses would continue to be deductible.

Q. The fewer deductions and tax preferences allowed, the lower the tax rates could go?

A. Exactly. It's a question of figuring the price tag on each one, and then deciding. You could eliminate all, or eliminate some and keep others, adjusting the tax rates accordingly. And the same with personal exemptions and tax credits.

Q. Is there any prospect that Congress would enact such a simplified tax law?

A. I think there's a hope.

Q. Wouldn't some people with special situations find themselves at a disadvantage if all deductions were eliminated?

A. There could be, potentially, some hardship cases. However, if at the same time an over-all tax cut were involved, there would be an offset.

Q. What's wrong with the deductions, exemptions and credits now provided by law? Why wipe them out?

A. These provisions have led to great complexity in the law. They were put in piece by piece over a 50-year period, without any coördinated plan. In efforts to be fair to this or that group, the law has been made unfair to others. People who have straightforward types of income, particularly professional and salaried people, feel that the result is inequitable, that they are footing more and more of the nation's tax bill. Thus, treating every type of income alike has great appeal, and merit, as a way of dividing the tax burden fairly among our citizens.

Q. Aren't deductions an efficient way to give tax relief?

A. An efficient way, yes. But I think we have overextended ourselves in using the tax law as the vehicle for curing every one of our social and economic problems. This adds complexities, eats into the tax base, leads to higher tax rates.

Take an example: There is great appeal in providing, say, a credit for educational expense. This has been urged by many in Congress. As the father of five children, I can appreciate the appeal. But as a matter of tax policy, I would say: if it is desirable to give some incentive to investing in education, let's find some other way of doing it. I think we should be very selective in using

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MORTIMER CAPLIN taught tax and corporate law at the University of Virginia, before President Kennedy named him Commissioner of Internal Revenue in 1961. Last summer he left the government to resume the private practice of law in Washington, D.C.

the tax law as a vehicle for incentive or stimulant.

Q. How can we get started toward a simplified system?

A. Perhaps with a comprehensive study by a full-time, paid commission. It should include leaders in the tax field, from both private practice and the universities. Business and labor should be represented. There should be an effort to come up with a comprehensive proposal to be used as the basis for legislative discussion and action.

Q. Would people continue to make large contributions to churches and charities if such contributions were not deductible?

A. The bulk of the charity received today comes from small contributions, made because the contributors believe in the charity and want to support it. I believe these people will continue contributing, regardless of deductions.

Q. What do you think of the idea of a flat tax instead of the present graduated rates?

A. I believe in a graduated system—although we need to review our underlying assumptions on the extent of graduation. A flat tax is contrary to our recent tradition. I know the graduated tax is debatable, but I think it has been accepted as part of the American way. It has helped finance this country through two world wars and the Korean War and a cold war.

Q. Do you think 70 percent at the top is too high?

A. I think it should be lower.

Q. Could we go lower withou any great cost in revenue?

A. Yes. Actually, the revenue impact at the top is small. The revenue loss would not be very great if we had a top tax bracket of, let's say, 60 or 65 percent.

Q. Are there other tax changes that ought to be made? What about corporate income tax?

A. I think the 1964 reduction of corporate tax rates was a very good move. And, in line with further individual-tax-rate reductions, I hope Congress will keep in mind further reduction for corporations.

I also think that we should review what is called the "double taxation" of dividends. They are taxed on the corporate level as a part of the earnings. Then, when distributed to the shareholders, they are subjected to the individual income tax. There is need for study and review and possible change of the entire corporate tax pattern.

Q. Would you alter the special rate on capital gains, now taxed at a maximum of 25 percent?

A. If we should move toward a broader-base tax, I think there would be changes in the capital-gains structure. I think the so-called "ersatz" capital gains would be the first to go—many provisions in the law place the capital-gains label on items one wouldn't ordinarily consider a capital gain. For example, certain lump-sum payments, such as from pension funds, are treated as capital gains. Income from the cutting of timber, as well as certain r alties, are treated as capital gains.

The 1964 Revenue Act provides relief against "bunching" of income by permitting income to be averaged over a five-year period—avoiding the sharp impact of the high brackets when a particularly large sum is received in one year. This is a major contribution to the fairness of our tax laws and could minimize the need for capital-gains "relief."

Q. It used to be estimated that 25 billion dollars of personal income escaped income taxes each year—

A. That figure is the amount of income not reported on tax returns. The amount of *tax revenue* estimated not being paid is closer to four to five billion dollars a year. Incidentally, Internal Revenue is beginning to see some results from its use of electronic devices in processing tax returns.* People are filling out their returns more carefully. Many people are coming into Internal Revenue offices trying to get their past records straight. In my last 18 months or so, over 1000 taxpayers came in and put four million dollars on the table just to pay old taxes—some of this obligation going back to 1918. There is noticeably improved tax compliance.

Q. So, despite all complexities, the federal tax system is working effectively?

A. Indeed it is. This past year our total revenue collections were more than 112 billion dollars. The impressive fact is that over 97 percent of this sum came from self-reporting, self-assessment and withholding. It's a remarkable record, unmatched by any nation in the world. Despite our griping and our criticisms, and our demand for betterment, we still comply with our tax laws. Despite all the defects we can point to, no other nation in the world has a tax system as strong, as effective and as fair as ours.

But it is important that we keep seeking improvements in our tax system—in administration and in the laws themselves. I hope the debate started over the 1964 Revenue Act will continue. Improvements will be made only if we voice our views and make sure they're conveyed to the halls of Congress.

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*See "Here Comes the Electronic Tax Collector," The Reader's Digest, March '62.

Reader's Digest, August 1967

Today, evidence from all over the country discloses that the IRS has bullied, degraded and crushed innocent citizens in the name of collecting taxes

Tyranny in the Internal Revenue Service

By John Barron

WHENEVER an income-tax cheat gets by, the rest of us have to make up the loss in revenue for which he is responsible. In fairness to the great majority of honest Americans, we must encourage the Internal Revenue Service to use every honorable means to collect what is owed the government. But something is now dangerously amiss. In its pursuit of our dollars, the IRS is resorting to tactics that threaten *all* taxpayers.

"Too many Americans pay more than their share of taxes because they are intimidated by a tax-collecting octopus which has them at a disadvantage and keeps them that way," declares Sen. Warren Magnuson (D., Wash.). No one can know just how many are treated unfairly by IRS. Last year it subjected 3,500,000 returns to special examination, extracting extra payments from 1,900,000 citizens because of alleged errors.* Moreover, literally no one is beyond IRS's reach, whether he has made a mistake or not. Bewildered, afraid, lacking money to hire lawyers, the lone individual often succumbs in silence when the awesome powers of government are brought down upon him. But today evidence from all over the country shows that in the name of collecting taxes IRS has bullied, degraded and crushed countless innocent citizens—while unaccountably favoring others. For example:

- In Kansas City, Mo., two IRS

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*In the entire nation only 1324 taxpayers were found guilty of actual fraud last year.

agents intruded upon Mrs. Michael Darrah while she was nursing her six-week-old baby. The young mother pleaded with the men to come back another time. Instead, for four torturous hours they questioned her about an income-tax charge against her father, Kenneth R. Layne. When she sought to call him for advice, one man ordered, "Don't touch that phone." Unsure of her rights, Mrs. Darrah asked permission to call a lawyer. "That will only make it worse for your father," an agent threateningly told her. For the terrified woman, it was tantamount to being held a prisoner in her own home. Ultimately, a jury unanimously concluded that Layne was innocent of any crime. But his daughter, never accused of anything, suffered a nervous breakdown.

- In Oakland, Calif., attorney Lew M. Warden, Jr., patiently answered questions about his tax return until an IRS agent demanded all his records. "Those files contain confidential information about some of my clients," Warden protested. "You have no right to them." So IRS arbitrarily disallowed his legitimate business deductions for three years and claimed he owed $19,501.41 in back taxes. It seized his bank account, ordered tenants of a cottage he owned to pay their rent to the government, confiscated his sailboat. Worse still, the constant IRS harassment took him away from his law practice so much that his income plummeted.

Insisting on a day in court, Warden spent his last savings preparing for his tax trial scheduled April 5, 1965. But on April 1, after hounding him for 33 months, the IRS suddenly dropped all charges. For, as it should have known all along, Warden had done nothing wrong and owed it nothing.

Proof Piled High. All this may sound incredible to those who have not yet been victimized by IRS. I was skeptical too—at first. But the proof has been piled high by court rulings, Congressional investigations, unrefuted sworn testimony, documented complaints to Congress and by the *admissions of IRS officials themselves.* It is so overwhelming that concern now grips a cross section of Congress.

More than half the Senate membership has gone on record as calling for something to be done about the way small taxpayers are abused by IRS. "My files, like those of every other Senator, are filled with moving appeals from taxpayers whose experiences with IRS have turned into nightmares of inquisition," says Sen. Norris Cotton (R., N.H.).

Alarmed by multiplying com-

Associate Editor John Barron came to national prominence three years ago as a reporter for the Washington *Star*—first for a series of articles on the tangled financial affairs of President Johnson and other leading politicians, then, with colleague Paul Hope, for an award-winning exposé of the Bobby Baker case. Barron joined the Digest's Washington Bureau in 1965. His investigation of IRS spanned six months, required 5800 miles of travel and more than 200 interviews.

plaints, the Senate Judiciary Subcommittee on Administrative Practice and Procedure two years ago began asking IRS officials and their victims questions under oath. The ensuing Senate hearings produced astounding testimony disclosing that: IRS has defied court orders, criminally picked locks, stolen records and threatened reputable people. It has illegally tapped telephones, seized, opened and read personal letters while spying on the private mail of tens of thousands of citizens. It has illegally bugged phone booths and hidden microphones where taxpayers talk with their lawyers.

Moreover, such lawlessness has been encouraged from high levels of IRS. Its Washington headquarters has bought elaborate spying equipment for use about the country. IRS sent many agents to an official Treasury School near the White House to learn how to commit such illegal acts as wiretapping and lock picking. IRS has maintained on call in Washington a staff of specialists in illegal snooping. "I violate state laws at all times," special agent Thomas Mennitt has testified. "It's part of my duties."

Summing up interviews with 621 individuals and 2756 pages of sworn testimony, Sen. Edward V. Long (D., Mo.), chairman of the Senate subcommittee probing into IRS practices, declares: "IRS has become morally corrupted by the enormous power with which we in Congress have unwisely entrusted it. Too often, it acts like a Gestapo preying upon defenseless citizens." Senate Minority Leader Everett Dirksen, a subcommittee member, reports: "Outraged constituents have inundated my desk with letters blistering the Revenue Service's collection practices. They show it is frequently the small taxpayer who is hurt worst in his attempt to deal with a giant bureaucracy like IRS."

Naked Power. Many IRS employes who have witnessed such practices firsthand are deeply disturbed. As a result, they have secretly provided Congress with evidence, a major reason why IRS abuses are now being exposed. Indeed, IRS's own personnel have openly applauded, through their National Association of Internal Revenue Employes, the Senate investigation, even while top IRS bureaucrats have tried to cover up and withhold data. After privately interviewing dozens of IRS agents, I have concluded that most, as individuals, want to be just and reasonable.

What, then, is the matter? Meeting me furtively in San Francisco, one veteran agent explained: "Sometimes you feel like the cop who's got to hand out so many tickets a month if he expects to get ahead. You're judged by how often you bring in more dough. Under such pressure I have seen people determined to find taxpayer error whether it's there or not."

Clearly, from all the evidence, the root of the problem is the IRS "system." For Congress has given so much raw, naked power to this one agency that it is a law unto itself. Consider some of the things it can do—without the approval of any court, judge or anyone else.

IRS can audit, interrogate or investigate anyone, for as long as it wants. In Kansas City, Mo., policeman Paul R. Campbell halted a speeding car driven by an IRS agent. "We'll just have to check your taxes," the agent was quoted as saying, after other arguments failed to stop the officer from writing a ticket. Sure enough, soon after Campbell filed his next tax return, IRS ordered him to report for an examination which lasted two hours. Unable to find anything wrong, it nevertheless pestered him for another four months with phone calls, letters and more interrogations before admitting he owed nothing.

In a small Tennessee town, an IRS agent riffled through mail on a businessman's desk, pried open an envelope and found a letter linking him with "another woman." The agent showed a copy to the man's wife, trying to anger her so that she would agree to inform against her husband.

IRS can assert that a citizen owes taxes, force him to prove he does not. After contracting to sell his home in suburban Detroit, businessman Roger Logan (not his real name) discovered that IRS had slapped liens of $210.07 and $400.07 on it for alleged non-payment of taxes. Logan's wife presented canceled checks and copies of past returns to prove no taxes were due, but without avail. "The best thing to do," an IRS clerk advised, "is to pay off the liens. Then, if you're telling the truth, you can sue to get your money back." Only after Logan got help from a lawyer friend would IRS even take the trouble to verify that he indeed owed nothing. The agency had tied up his home simply because it had two old claims against someone with a *similar* name.

IRS can merely claim that a citizen owes taxes; then, if he fails to pay instantly, it can immediately confiscate his salary or all the money he has deposited in a bank, or seize everything he owns.

Nobody knows this better than farmer Noel Smith of Taylor, Mo. IRS checked Smith's books for nine years without telling him it suspected any significant irregularity. Then one morning a friend ran up to him with a newspaper report that IRS was taking over his farms. Smith rushed to town, only to learn that IRS had confiscated all his money in the bank, the contents of his safe-deposit box, even an insurance policy belonging to his 70-year-old mother. Five days later, IRS formally demanded that he pay it a staggering $501,000.

With help from friends, Smith hired lawyers and accountants to unravel the fantastic IRS claims. Meanwhile, the agency began selling off his stored grain, using sledgehammers to batter apart his bins. "High-handed," "unlawful," declared the U.S. Court of Appeals upon hearing what IRS had done.

Nevertheless, IRS kept custody of Smith's property and denied him income from it for four years before deciding that he actually owed $54,573 in taxes. Smith paid this "ransom," as he termed it, so that he could recover his land. Another year Smith overpaid his taxes but had to sue to force IRS to give him back $7820 the government owed him. And to this day IRS is still after him. "I did not think it could happen in the United States," Smith told Senate investigators.

But I have found that it does happen. To make sure that people who complain are not just disgruntled crackpots or conniving tax dodgers, I traveled across the country talking to IRS victims, their families and neighbors. And I found that when IRS misuses its vast powers, the people most likely to suffer are not gangsters or rich tax cheats. They are ordinary people who do not command batteries of lawyers and who have no special influence in Washington. And what IRS does to one citizen, it can do to any other.

Kicking People Around. Look at what happened not long ago in Richland, Mo., a small town in the Ozark foothills. As he told the Senate committee, the local bank president, Gordon W. Warren, was alone in his office when two IRS agents marched in and demanded the records of a depositor. "I'll just notify this customer," Warren said, reaching for the phone. "If you do that," an agent told him, "you'll be liable to a $10,000 fine and a ten-year imprisonment." The threats were as illegal as they were inexcusable. But how could Warren know?

Down the street an IRS agent confronted a waitress with a $275 tax claim. When she protested, the agent threatened to confiscate and "dispose of" her old car unless she paid up *that day*. Near tears, she went to see Warren, who agreed to lend her the $275 necessary to hold IRS off. Only after she spent days getting a sworn affidavit to document her deductions did IRS admit she didn't owe the bill which it tried to intimidate her into paying.

Across the railroad, Fred and Katherine Tomlinson run a one-room Dairy Queen shop. They have never made a lot of money, but enough to rear their children and make their own way. On March 31, 1965, a worried bank cashier ran to see them. "The IRS has seized your bank account," he reported. "They claim you didn't pay your taxes last year." Tomlinson couldn't understand: "The government's never said anything to us about owing any money." That night, he and his wife dug out a canceled check proving they had paid in full, and mailed it to IRS. Meanwhile, checks they previously had written bounced because of the IRS seizure of their funds. "I'm so ashamed," Katherine told her husband. Not until eight days later would IRS restore their money —without the least apology.

This callous disregard of the rights, feelings and welfare of ordinary people goes on all the time. Last March 28, IRS without forewarning attached the salary of Chicago salesman Jerry G. Pfnister. Thus Pfnister was branded as "financially irresponsible" in the eyes of his associates. Only later would IRS give him a letter admitting that it had made an error and he owed nothing. But that has failed to restore Pfnister's reputation.

Conform—Or Else. The attitude that it can do as it pleases sometimes causes IRS to lash out vindictively at people who disagree or cause it trouble, even at its own employes.

Claude F. Salter, for example, is a distinguished veteran of 34 years with IRS. His record as chief of its San Francisco audit division was so outstanding that IRS admits "we cannot deny that he did perform well." Salter was stubborn, though, when it came to principles. To superiors who asked special treatment for certain taxpayers, he consistently said no. So in the spring of 1964, these officials tried to have him declared unfit by ordering him to the U.S. Public Health Service Hospital and sending along a letter implying that he was mentally ill. A battery of psychiatrists and physicians told Salter that he was well adjusted, intelligent and healthy. Nevertheless, IRS soon demoted him to a lesser job where he could not influence policy.

In Dedham, Mass., 31-year-old accountant Donald R. Lord responded to a knock on his front door one Saturday morning, still in his pajamas, and three IRS agents pushed past him into his home. They ordered him to get out corporate records entrusted to him by a local businessman. "You'd better coöperate if you expect to stay in business," Lord was warned. "Don't make any phone calls, or you'll be subject to prosecution."

After interrogating him most of the day, the agents confiscated boxes of papers, threatening him with a jail sentence if he resisted, and drove away.

Soon thereafter, a neighbor phoned: "Some IRS men were here today, asking questions about you." Meanwhile, IRS agents went to Lord's bank and copied his financial records. Others hounded his relatives with interrogations and even tried to question his 88-year-old grandmother.

Angered and worried, Lord engaged a distinguished Boston lawyer, Lawrence O'Donnell. Subsequently IRS, by its own admission, subpoenaed Lord to appear at a conference in a secret office which had been carefully bugged in advance. Suddenly O'Donnell, too, was subjected to hostile IRS examination. An employe at Boston's Carney Hospital, where O'Donnell had undergone five critical operations, tipped him off that IRS was questioning his medical expenses. Moreover, as IRS later admitted, agents pored over his tax returns covering six years, hunting futilely for some error.

The Federal District Court in Boston declared that IRS's "unlawful pressures" against Lord came "close to extortion." It ruled the seizure of the business records completely illegal, and forbade IRS to make any further use of them. Yet, as O'Donnell subsequently proved with testimony of one agent who resigned in disgust, IRS made copies of these records and continued to use them—in arrogant contempt of the court order.

A Double Standard. And now, consider undisputed evidence which Sen. John J. Williams (R., Del.) has unveiled on the floor of the Senate. It shows that while mercilessly trying to take the last cent of some taxpayers, IRS has treated others quite differently.

Over a period of seven years, IRS allowed the New York-based real-estate firm of Webb & Knapp to pile up tax debts of more than $27 million, while the Federal Housing Administration lavished on it $67 million in government-insured loans. Upshot? Webb & Knapp defaulted on the loans, and IRS in December 1965 wrote off a whopping $26 million as "uncollectible." Similarly, IRS last year simply wrote off as "uncollectible" a tax bill of more than $23 million owed by six American shipping companies controlled by Greek magnate Stavros Niarchos.

As Senator Williams notes, still harder to explain is the treatment of people like Lawrence L. Callanan. An official of the Steamfitters Local No. 562 in St. Louis, Callanan was convicted in 1954 of extortion, received a 12-year sentence. He was paroled in 1960, and in April 1964 President Johnson commuted his sentence, thereby enabling him to become a union leader again. The same month, IRS settled his unpaid tax debt of $40,219.84 for a token $17,000 plus an agreement that he would pay more if his income rose. "No prospect of any material increase (in income)," said IRS. A few months later, Callanan's union lieutenant, John L. Lawler, handed over $25,000 to "Friends of L.B.J." Next, Callanan, supposedly without money for his taxes, kicked in $2000 to the Democratic National Committee. Then he emerged as director of the lush "voluntary" political fund of Local No. 562, his salary reported at $15,000 to $20,000.

Honest citizens can derive little comfort, too, from the knowledge that IRS has issued a special ruling to reduce the tax that criminals owe on money they steal! Internal Revenue Bulletin No. 1966-42 of October 17, 1966, states: "Embezzled funds will be taken into account if a taxpayer chooses the benefits of the income-averaging provisions." So if a crook gets away with, say, $100,000, it will be okay for him to pay taxes on only $20,000 of stolen money a year over a five-year period.

A Bridle for Bureaucracy. In the face of such outrageous practices, why do we allow IRS power that we would not dare entrust to any other agency? We would never allow police to roam the land grabbing property, confiscating bank accounts, persecuting people at will. If we ever are to start preventing Big Bureaucracy from dehumanizing our lives, the place to begin is with the most powerful bureaucracy of all—the Internal Revenue Service.

Aghast at the discovery that IRS was reading private letters, Congress passed a law in 1965 forbidding it to further rifle the mails. Commissioner Sheldon Cohen has pledged an end to the illegal wiretapping, bugging and other illegalities, promised to purge IRS of the attitude that the taxpayer is the "adversary." Experience shows, though, that no government agency can be trusted to reform itself. Clearly, some reforms from the outside are needed.

Senator Magnuson, joined by 59 other Senators, has proposed the establishment of Small Tax Courts where taxpayers—without hiring a lawyer—could informally present grievances in disputes with IRS involving less than $2500. But, in line with the basic legal principle that a man is innocent until proved guilty, Congress must now make an exhaustive examination of the arbitrary powers which IRS has demonstrated itself unfit to exercise. Before grabbing anyone's salary or bank account, IRS should have to show in court some proof that taxes are owed. Before walking off with all a man owns, IRS should be required to convince a judge that the taxpayer is hiding his money or is about to flee.

It is important for all of us to stop being afraid of IRS. When it acts unfairly, we should speak out.

Let your Congressman know what you think of IRS abuses—and that your vote in 1968 is going to be influenced by what he does to stop them. Moreover, if you have documentary evidence of such abuses, give it to your Congressman or to the Senate investigators.* For only public indignation, backed by facts, will force reforms.

Reforms no doubt will make the work of IRS somewhat more difficult. But in recent years we have chosen, through the courts, to erect a maze of legal procedures to protect the rights of the most depraved and dangerous criminals. It is time we did something about protecting the rights of the honest American taxpayer, too.

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*Senate Judiciary Subcommittee on Administrative Practice and Procedure, Room 3214, New Senate Office Building, Washington, D.C. 20510.

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DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE SERVICE—Resumed

INTRODUCTION OF COLLEAGUES

Senator **ABDNOR.** Commissioner, we're once again happy to have you back. Why don't you introduce your colleagues and proceed.

Mr. **EGGER.** I have up here with me Philip Coates, who is the Assistant Commissioner for Compliance; he's on my right. And then John Carlson is the District Director here in Alaska. I asked them to join me up here in case any of the points required discussion by them.

NO RETRIBUTION AGAINST TAXPAYERS

Let me first start out by saying that in the course of the hearing this morning, a number of references were made to possible retribution with respect to the taxpayers and I don't think I need to assure you gentlemen——

Senator **STEVENS.** On the contrary, Mr. Commissioner, I hope you will assure us that that won't happen.

Mr. **EGGER.** I would hope that you would assume that, but I assure you that it will not happen.

One other thing that was brought out by one witness and this was a serious accusation against one of our staff people, Patricia Hitch, she was accused by one of the witnesses, Mr. Roach, of having called him in effect, a petty crook. I have since ascertained that no such statement was ever made by Patricia Hitch. She is prepared to come here and testify to that effect or to supply a sworn statement to that effect and I'd like the record to show that there's an absolute flat-out denial of that.

Senator **ABDNOR.** The record will show that.

Mr. **EGGER.** Thank you.

I'd like to take the time to try to review in the order in which they appeared, some of the points made by the various witnesses. Mr. Van Doren has supplied us with wavers signed by him on a number of the taxpayers about whom he spoke, but unfortunately, we've had no opportunity to ascertain that the powers of attorney which he relied upon in signing the waivers are in fact, currently in effect. And so I'm going to have to—I'm going to have to defer any specific statements that would be in violation of 6103 of the code in those cases. However, there were a number of points made that are general in nature and we can certainly reply to those.

CASE OF WILLIAM WOOLLEN

(IRS response on page 387.)

The first case that he spoke about was a Mr. William Woollen, and this had to do with the flight training expenses which were covered by the Veteran's Administration Act benefits. And really what he's quarrelling with here is that we issued a revenue ruling in 1962 number 62–213, which in effect deals with general reimbursement of education expenses and then revenue ruling 80–173 which dealt with reimbursement limited to specific flight training costs. The position taken by the IRS in the 1980's ruling was that since the expenses were in effect reimbursed by the Veteran's Administration, as in the case of insurance coverage of casualty losses, a deduction should not be allowed where in effect the expenses are paid out of benefits that are specifically provided by the Veteran's Administration Act.

I recognize that the attorney and the taxpayer in this case may wish to take issue with our position in the revenue ruling, but I believe that is not a proper subject for trying to deal with that in this hearing.

CASE OF MIYOKO KAUFMAN

(IRS response on page 387.)

The next case was Miyoko Kaufman and here because of the waiver part, I really can't get into the details of it except to say that there was some mixup which we will look into and which we will deal with the attorney directly, but I can't really get into the details of that one.

CASE OF TONI (M'FARLANE) CARMICHAEL

(IRS response on page 389.)

He mentioned Mrs. (McFarlane) Carmichael, Toni (McFarlane) Carmichael. The quarrel here is that the innocent spouse rule should apply to items of deductions as well as to income issues. And unfortunately, this is a case that has to be dealt with by the Congress because the statutory rule referring to the innocent spouses in these cases applies only to income issues and not to deduction issues. So we have no choice in that particular case.

CASE OF MR. AND MRS. BARNHART

(IRS response on page 389.)

In the next case of Mr. and Mrs. Barnhart, this is a matter of credit for withheld taxes where there was a subsequent payment by an employer of withheld income taxes. Although I can't get into the details of this case, I'm satisfied that there is a procedural problem here which has been now brought to my attention, and which I believe does bear looking into. So I am most appreciative that Mr. Van Doren has brought this particular one to our attention because I do see a procedural problem here and do intend to follow that one up and see if we can't mend our procedures to eliminate that kind of a problem in the future.

CASE OF PHILIP LOCKWOOD

(IRS response on page 390.)

In the case of Mr. Philip Lockwood, this is stated to be an issue of where there was a delay, an unnecessary delay in dealing with the claim and also a net operating loss carryover or carryback issue. We simply did not have enough information to try to develop a response to this one even if it hadn't been for the waiver problem. But we are looking into it to see just what took place. I could say that as a general proposition, if someone, a taxpayer filed a claim and they simply filed it on the wrong form and that were all there were to it, over and over and over again, we honor such claims by treating whatever it is that's on file, a letter or otherwise, as an informal claim. And as a practitioner myself, I've had the experience a number of times of having such informal claims honored by the Internal Revenue Service and as Commissioner I know that as a matter of policy we would not disallow a claim and have it in effect eliminated by the statute of limitations if there were something that could be identified and used as an informal claim.

Senator STEVENS. What about tolling the statute though? How would the taxpayer know whether it had been tolled or not?

Mr. EGGER. Well, he would know what the statute of limitations is. We would ordinarily, in audit situations, in collection instances, we furnish the taxpayer with complete statements as to their rights, their appeal rights, as to the statute of limitations matters, and as to our procedures. Every taxpayer upon audit of the return is supplied with that information as the audit progresses and so there's no real reason why they wouldn't have been aware of the statute of limitations had the information been—had the information been read. I do not know what the circumstances are in this case. I'm certainly stating as a general proposition, that we would ordinarily honor anything that could be identified as an informal claim having been filed. We're not interested in having the statute of limitations run on a refund claim at all, anymore than we are letting one run on an assessment. So we try to be cautious about that and not have the taxpayer hurt unreasonably.

Senator STEVENS. It would seem that if a claim was filed, as I understand the present statute, it wouldn't toll the statute if a claim was filed, is that right?

Mr. EGGER. That's correct.

Senator STEVENS. But if the claim was filed within the period and was filed on a wrong form, what you're saying is that you would treat it as being bonafide within the statute?

Mr. EGGER. Properly filed claim, yes, sir; that's correct.

Senator STEVENS. But as I understand this case, the claim was made on the wrong form but the IRS did not rule on that until after the statute had passed and then the IRS claimed that it was too late to file a proper claim.

Mr. EGGER. I'm simply saying that I do not know the facts in this case. We've been unable to develop them in such a short period. But if that were the case, we would treat the original filing I am certain, as an informal claim and treat it as having been timely filed.

Senator STEVENS. I should think if the taxpayer wrote a letter and indicated a refund was due, even though he didn't use the proper form, if the Government's on notice that the claim is there, that ought to be sufficient to meet the requirements of the statute of limitations.

Mr. EGGER. That's correct. Your assumption is correct. We would certainly do that.

CASE OF NORMAN GRANT

(IRS response on page 392.)

The next witness was Mr. Norman Grant. In July 1978, a so-called 100-percent penalty was assessed against Mr. Grant as the responsible officer of a construction company. And let me just interrupt to say that the so-called 100-percent penalty is simply charging the officer, the responsible officer, with the withheld taxes where the corporate taxpayer fails to pay over the withheld taxes. So it isn't that—an additional penalty on top of the tax. It is in effect, the tax itself.

PENALTY INVESTIGATION

The 100-percent penalty investigation has been drawn out over about a 3-year period. The original corporate form 941 returns were prepared by the Examination Division and Mr. Grant appealed both the corporate assessment and the 100-percent penalty assessment. Now this 100-percent penalty was eventually collected from Mr. Grant in July 1980 by offsets against his 1040 return. He made references to other officers of the company. Our procedure ordinarily would be to proceed against any responsible officer of the corporation and we would collect from whichever of them we could. Once the item is paid, then we would no longer have anything due from anyone. Now whether he and the other officers of the company didn't collaborate or coordinate on this, is something over which we have no control. In all events, we could not tell him about something that we were dealing with another officer on, nor could we tell the other officer about matters that we were dealing with Mr. Grant on. Again, under 6103, we are precluded from talking about those affairs of other taxpayers.

Senator STEVENS. Even when it involves the same liability for corporate directors, for a defunct corporation?

Mr. EGGER. That's correct.

Senator STEVENS. Well, wouldn't you have a situation where you might collect from more than—more than the whole amount due from the corporation then?

Mr. EGGER. No.

Senator STEVENS. How would they know that there's been a payment by another corporate director or officer?

Mr. EGGER. We would know that.

Mr. COATES. Senator, if the total amount is overpaid, it would be refunded.

Senator STEVENS. To whom?

Mr. COATES. To one of the corporate officers.

Senator STEVENS. But that's his point isn't it? Isn't he entitled to know if another corporate director or officer has made a partial payment?

Mr. COATES. We wouldn't collect the total amount if a partial amount had been paid theoretically.

Senator **Stevens**. Theoretically, yes, but you could have two different agents operating on the same case. I should think that where it's not a personal liability but an imputed corporate liability, because the person was an officer or director of a defunct corporation, that they're entitled to know what your records show. That's not disclosing personal information as far as the other corporate director or officer is concerned. It is disclosing corporate information that he's entitled to by virtue of his position, because he's going to be liable. I really don't understand some of the fences we put around ourselves when we deal with imputed liability. This is not personal liability, this is corporate liability.

Mr. **Coates**. This is corporate withholding tax of corporate trust funds.

Senator **Stevens**. That's right. And the corporation didn't withhold the proper amount——

Mr. **Coates**. And didn't pay over.

Senator **Stevens** [continuing]. It's now defunct, but the officer's being held responsible.

Mr. **Coates**. Yes, sir, the responsible officer.

Senator **Stevens**. So it's not a personal liability to the other corporate director—officer. I don't see how the statute protecting the personal information of that other director has anything to do with this case.

And again, it's one of those items, Mr. Commissioner, I think we ought to take a look at because there's probably not a lot of people getting involved in this situation but when they do, I think they're entitled if we're going to impute the corporate liability then they're entitled to all the knowledge that the IRS has concerning that corporation's affairs and it is not invading anyone else's personal rights, because those are not by definition, personal rights; they're corporate rights.

Mr. **Egger**. Well, I happen to agree with you. I'm simply saying that as of now at least, we believe that the statutes prohibit that kind of interchange of information but I'll certainly be glad to look into it.

Senator **Stevens**. I'll join in that because I think it should protect them.

Mr. **Egger**. One other item. He did make reference to a former revenue officer, Frank Avezac, who was recently indicted for threatening to use his knowledge of the IRS to have Mr. Grant investigated if he didn't do certain things that Mr. Avezac wanted him to do. Mr. Avezac, for your information, was a grade 9 revenue officer who spent probably 2 years with the IRS and so you can judge for yourself about the extent of his knowledge of IRS procedures and so on. In all events, I want to assure the committee that we are cooperating with the Alaska State troopers in the investigation of Mr. Avezac to the extent possible, again, within our disclosure laws.

EXCESSIVE AUDIT

Senator **Stevens**. Mr. Chairman, I don't want to monopolize but I want to ask another question.

What about Mr. Grant's claim that he had been audited each year from 1965 through 1978. Now from the point of view of the workload of this office, how can you have a situation where under this sort of random search, the same person gets audited year after year after year?

Mr. CARLSON. Senator, I don't have the information about the extent or the frequency of the examination, but as a result, we would not, unless something is a reoccurring issue that goes from one year to another or a special situation like a tax shelter or a particular failure to file, or particularly ongoing problem, we would normally not audit everyone year after year after year.

Senator STEVENS. It's not everyone, it's just this one. Undoubtedly maybe others have the same claim but I don't see how it could happen. The laws of chance ought not to bring it. Don't you have some random search in terms of certain income tax groupings to determine whether you audit?

REPETITIVE AUDIT PROCEDURE

Mr. COATES. Senator, we select most of our examinations in the field and individually they are selected from what we call our DIF formulas. But the characteristics of those returns frequently float to the top. The same return a second year, if it's high scored in one year, and the characteristics of the return do not change, it may float it to the top. At the time that the gentleman was referring to, we did not have a repetitive audit procedure. We do have a repetitive audit procedures today.

Senator STEVENS. What does that mean?

Mr. COATES. It's relatively new. If a return, during the past 2 years has had a nominal change at the time of an examination, or if it had no change in 1 of 2 previous years, then the return is not selected for a repetitive audit. We're just as concerned about going out and doing a repetitive no change, minimal change audit. Now if there's been a substantial change, the repetitive audit procedures would not prevent that return from being examined.

Senator STEVENS. Thank you.

ISSUANCE OF STATUTORY NOTICE

Mr. EGGER. Before I go to the next one, I would like to go back to one of the matters that Mr. Van Doren mentioned and that was in the *Kaufman* case. That involves an issue where through error or oversight or something, a 90-day letter was issued and then they went beyond the time for filing a petition in the Tax Court under an erroneous belief that the tax liability was much smaller and so on. This simply points up a problem having to do with the isuance of statutory notice. I am advised by counsel that once a statutory notice or a 90-day letter has been issued, that we can't withdraw it. That is to say, we can't pull it back after it's been issued, and it has come to my attention on at least two or three occasions since I've been in this office, where a 90-day letter does get issued, in error or prematurely, and we should be able to sort of stop the clock and go back and resolve the issue without going into the court. Most of the time taxpayers find this out before the 90-day period runs so that at the outside they can protect themselves by filing a petition. In this case because of the belief that the liability was much smaller, the 90-day period was allowed to run out.

Senator **Stevens**. Well, Mr. Commissioner, something different, they state that because they were confused as to the status, the taxpayers requested the IRS the total amount of taxes owed by them for the years under audit and subject to notice of deficiency. The time for filing the petition to the court was due to expire, that the local IRS office gave them a statement in writing of the total amount of taxes, interest and penalties due for the years in question and they paid that. Now, how can the government come back and claim more after that?

Mr. **Egger**. I'm looking into that one because of both the waiver problem and our lack of information. I simply was referring to the general problem of a statutory notice having been issued under circumstances that something was overlooked or there was an error or it was issued prematurely, something of that kind. This is a general problem that I believe needs to be resolved legislatively. And we'll be looking into that.

Senator **Stevens**. I'd like to work with you on that one because I think once the IRS makes a statement in writing, that this is all you owe and if you pay this you're clean and they pay it, that the Government ought to be estopped from making any further statements to the contrary and if there's something contrary in the law today we ought to change it.

Mr. **Egger**. I agree with you and I am going to look into this particular case. But as I said before, because of the waivers we have a little problem on this one.

CASE OF DANIEL KELLMAN

(IRS response on page 393.)

The next one was Daniel Kellman and basically what he is concerned with here is the disallowance of his contribution to the Universal Life Church. What I'd like to do, Mr. Chairman, if it's agreeable to you, is to simply defer discussions of the Universal Life Church issues until we come to another taxpayer that brought up the same issue.

CASE OF JAMES PITTS

Following that was Mr. James Pitts. And his was basically a constitutional debate which I won't go into but he did make the comment that I've been represented as having said that all tax protestors should be thrown in jail or something to that effect. I don't believe I've ever made that kind of a statement. I have decryed on a few occasions the use by taxpayers of spurious constitutional issues which have long since been tried in the courts.

CASE OF HILLARD T. ROACH

(IRS response on page 394.)

The next one is Mr. Hillard T. Roach. Mr. Roach made a couple of references to a $15,000 credit which was not refunded. In the short period of time here we've been unable to identify that there was anything like a $15,000 credit in his account. There is serious confusion between his personal affairs and that of a corporation of which he is the owner or the senior officer. We did find that there was about a $1,600 credit, in his 1978 return, which at the moment we are precluded from refunding because of an order of the bankruptcy court. We suspect that the reference to $15,000 was really $1,600 because he also made reference to a check for $8,000 and our records show that there was a check issued to him erroneously for a little over $800.

Senator STEVENS. Do you have the letter of June 23, that he gave to us?

Mr. EGGER. I do not have it.

Senator STEVENS. Which states, "form 1040, 1976, this return has not been received by the Internal Revenue Service. There are, however, several credits for tax due on the 1976." It lists estimated tax payment of $4,500, the payment application for extension of $1,500, subsequent payment $9,700 with the total credit of $15,700. It's my understanding that that's the credit that he was trying to get recognition of as he sought—as he went through this procedure.

Mr. EGGER. We are going to get more deeply into this one, but the time just didn't permit us to get much beyond a very cursory look at the files. There is a great deal of confusion here between his affairs and those of the corporation that he made reference to in his testimony.

Senator STEVENS. Why don't I give you a copy of that letter.

Mr. EGGER. All right.

Senator STEVENS. Just for your files, so you don't have to dig for it.

Mr. EGGER. Thank you.

CASE OF DANIEL EMANS

(IRS response on page 394.)

The next one was Daniel Emans and Daniel Emans made reference to his withholding allowances. This is a case where Emans was indicted and tried on filing false withholding allowance certificates in which he claimed 34 to 36 allowances. In his testimony he brought out that in the court proceedings in which he was being tried on these charges, that the court stated that he was entitled to 37 allowances. What actually took place is that during the trial, defense counsel had asked for a demonstration of how we calculated the number of allowances that were permitted. And so there was a hypothetical question posed to the witness concerning a case where there was $40,000 of itemized deductions and how would the formula work. And in that case our hypothetical answer was 39 allowances, but it had absolutely nothing to do with the taxpayer's individual circumstances. It was purely a hypothetical question.

Now his reference then to our current situation undoubtedly has to do with the present situation, his present situation, with respect to withholding allowances. Since he hasn't filed any income tax returns for 1979, it's not very likely that we can continue to do other than to hold him to minimum allowances, until we have some kind of a record.

This brings up the whole problem of withholding statements and I can tell you on the record that over the past several years a pattern of tax protesting has developed in which employees have been urged to claim 99 withholding allowances or claim exempt in order to take themselves off the withholding roles. And the regulations which we put into effect earlier this year, require that the employer send to us the W-4 statements where more than 9 allowances have been claimed and then we search the files to determine whether there is probable cause for the taxpayer to be entitled to as many allowances as he has claimed. If the file doesn't reflect that, then we inform the employer that the taxpayer is to be allowed only one exemption until such time as additional exemptions have been substantiated. So that's the problem that we're really dealing with here.

CASE OF JEAN SCHAENEN

The next withness was Ms. Jean Schaenen, attorney for American Tax Education Society. We do not have waivers on the society as such, and affiliated organizations. We therefore cannot talk about their problems other than those which are already a matter of record in certain court proceedings.

Senator MURKOWSKI. I have a question on that particular witness, Mr. Commissioner. With regards to the interests of IRS collecting membership records, organizations such as this, is there a policy of IRS officially as to the alleged interests in acquiring such membership lists?

TAX SHELTER SCHEMES

Mr. EGGER. Let me put it this way, Senator Murkowski: We are charged with enforcing the tax laws of the country and when we have reason to believe that an organization is or may be a part of encouraging taxpayers to participate in questionable tax shelter schemes, or where we believe they are, in effect, distributing such schemes, yes, we will take whatever steps we can.

Senator MURKOWSKI. You make reference to tax shelter schemes. We all know that tax shelters are available within the law if you have the expertise to figure them out and the capability to find someone or some legitimate tax shelter that is available. Now it's my understanding in this particular instance at least, on the surface that there's an effort by a group of small people so to speak, to make that expertise available to the little person and it's an educational group.

And my question is, Is this part of the Internal Revenue procedure to make an assumption that they're out to circumvent the law when we all know that there are legitimate tax shelters and if this group chooses to make its educational material available for the legitimate seeking of tax shelters, why would there necessarily be an interest by IRS in having a membership list of a group such as this?

Mr. EGGER. Senator Murkowski, I just said that we do not have waivers from this organization and so therefore I will have to decline to respond to your questions with respect to this organization.

Senator MURKOWSKI. Thank you.

Mr. EGGER. I will simply say that if the facts are exactly as you stated them, then of course your question would be totally appropriate.

Senator MURKOWSKI. My concern was obviously based on the propriety of IRS seeking members from organizations just on the assumption that the intent of the organization may be to circumvent the fair payment of taxes and as you say you don't have any information on the organization even though it's been in existence for some 4 or 5 years and evidently operates outside the State of Alaska.

Mr. EGGER. First of all, let me say that based on testimony in court, the American Taxpayer Education Society as such was separated from an organization called ATES which is, by its own identification, a business trust. And we have not attempted to obtain membership information from American Taxpayer Education Society but rather from ATES which is not the club but a separate organization, and so stated in court by its leadership. So for your information and for the record, we have not sought membership identities from American Taxpayer Education Society.

Senator MURKOWSKI. Thank you.

Mr. EGGER. The testimony and the statements which were made by both Miss Schaenen as an attorney and by the dentist who testified, sort of describes a pattern of what we run into in the case of taxpayers who do not wish to be cooperative. When we send out a notice to the taxpayer explaining that the taxpayer's return is to be examined and we list several items of information that we'd like to have, one of the tactics is to send back to us a list of 29, 30, 35 questions for us to answer in writing. Almost invariably the list of questions has little relevance to the issues at hand. When their demand is not met and we come back and ask for information again, the next step usually is to send out a request under the Freedom of Information Act for a whole lot of other irrelevant information which then further delays the proceeding. Then when these things don't work, then there are other delays such as refusal to answer summons and then we have to go to court and to go through a summons enforcement proceeding. These tactics can go on and on and on, sometimes delaying an examination for 2 or 3 years. I'm simply telling you the circumstances under which we have to operate in many cases which are not unlike the kind of testimony you heard here today.

Now in the case of Mr. Valiente——

Senator MURKOWSKI. I have one other question if I may, Mr. Chairman.

Senator ABDNOR. You may.

ESTABLISHMENT OF TRUST AGREEMENTS

Senator MURKOWSKI. With regard to the statement of the position of the IRS toward establishment of trust agreements as they would necessarily put a cloud on the passing of a title of land, I think that was brought up in the testimony. Can you comment on that? I think there's a need for clarification.

Mr. EGGER. That's a good point and I certainly will explain it.

We have been asked in a number of instances by professional groups, accountants, lawyers, other organizations, to comment on some of these things that are being touted as a perfectly legitimate and appropriate tax shelter. I must tell you that the tax shelter business in the last several years has grown to tremendous proportions. In the business world you can hardly go through a week that half a dozen of these things don't come across your desk and some of them make unusual claims to say the least. Because of this problem, many taxpayers who receive information directly or indirectly about the various schemes go to their accountant, to their lawyers, and many times these people have not spent a great deal of time investigating every one of these schemes themselves. So they have asked us, from time to time, could we identify some of the ones that we regard as problems. That is the types of proposals not necessarily the individual proposals, but the patterns. And so some time ago one of our District Directors, in response to that kind of a request, put together such a statement in the Practitioner's Newsletter. This is a newsletter that the Director sends out to the practitioners in the district to keep them informed of what's happening and so on and spelled out some of the patterns of schemes that we regard as highly questionable. Because that was so well received in the Seattle district, some of the other districts, including the district here, have also distributed that same statement in the form of the Practitioner's Newsletter. Now that's, I believe, what they had reference to. We have not, in that newsletter, described any scheme as illegal, we have not described any particular business entity as illegal. We have merely made references to the facts that some of the patterns in using such things as trusts and foreign trusts, in a kind of a circuitous out and in pattern are at best, questionable. And that, I think, is what the reference was about today.

Senator STEVENS. Well, now, Frank, would you let me follow up just 1 minute here?

But your claim is that the title to that real property is clouded because of the existence of a trust and the bank and the title companies apparently take an exception on the basis of advice from the IRS that the IRS does not consider that entity as a legal entity. But we've always been under the impression that it was state law that determined whether an entity was legal and whether it could own property. Does the IRS really take the position that it's going to cast a cloud on those titles as that title company indicated?

Mr. EGGER. No, sir, Senator Stevens. We have not and would not do any such thing. If we raised a question about a particular trust as it related to an individual taxpayer, we would raise the question concerning the relationship between the trust and the individual. What some title company might choose to do as a matter of their own policy, would be their decision, but nothing we've put out in any newsletter would take the position that a trust is not legal. Obviously that would be a ridiculous position for us.

Senator STEVENS. I don't have that piece of paper in front of me now, but that title company took that position, we are informed, because of an IRS directive.

Mr. EGGER. No, the IRS newsletter is what I have just referred to. We can supply a copy of that for the record if you'd like.

Senator MURKOWSKI. I've got that here. It's a note on the bottom of the preliminary title. It reads as follows: "The necessity of providing this office prior to closing copies of trust agreements establishing Abel Co., a trust organization, Baker Co., a trust organization and proof that said trusts qualify as legal entities." And that's listed as an exception to the title.

Senator STEVENS. But, Frank, the letter said specifically, "These trusts are not recognized by the Internal Revenue Service, therefore we cannot recognize them as a legal entity."

Now I think that's a misunderstanding of the role of the IRS, that you don't have the role of determining what's a legal entity in the State of Alaska.

Mr. EGGER. We have not said that, Senator.

Senator STEVENS. Thank you.

Senator MURKOWSKI. To clarify so that we all understand, you are saying that; "These trusts are not recognized by the Internal Revenue Service, therefore we cannot recognize them as a legal entity."

Mr. EGGER. It could well be that we might not recognize some trusts as having existence for Federal income tax purposes. What position it would have under——

Senator MURKOWSKI. But you're not generalizing to a title company——

Mr. EGGER. What position it would have under State law, we would have absolutely nothing to do with that.

Senator MURKOWSKI. So I assume if the title company were to make an inquiry to the district office with regard to the official attitude of the district office in general, they would respond by indicating that they had not interest in general in whether or not the title company—urging the title company to show as a cloud anyone holding a trust?

Mr. EGGER. That's correct. It would not.

Senator MURKOWSKI. It might be appropriate if the Kachemak Bay Title Agency, Inc., took note of that.

Mr. EGGER. I think maybe, Senator Murkowski, it might be useful for us to supply for the record a copy of the newsletter which did discuss these patterns so that you'll have a complete record as to what in fact, we did say.

[The Tax Practitioners Newsletter appears on page 112.]

Senator STEVENS. It's the implication from the—this bulletin that came from your regional office that tax benefits gained from setting up such trusts have been grossly and improperly misstated by some promoters and have no legal justification. Apparently the title company took that to mean that you believed the trusts were illegal. It's the tax benefits that you were addressing——

Mr. EGGER. Yes, of course.

Mr. COATES. Senator, in our tax shelter program, we constantly, in the technical division in Washington, soliciting from our people in the field all over, all of our 58 districts, information about shelters, information about schemes, promotion of those types of things as they come out so that we can go ahead, take a look, rule on at least what the Service's position would be with respect to that particular promotion and the taxpayers that might be interested in investing, may be forewarned that this will be the Service's position with respect to that shelter and I think this situation is somewhat analagous to that.

UNIVERSAL LIFE CHURCH

Mr. EGGER. Two of the witnesses today made their particular statements with regard to the Universal Life Church in Modesto, Calif. Now it is true that the Universal Life Church in Modesto, Calif., won in court a right to exemption under 501(c)(3) of the Internal Revenue Code. However, that church has taken the position that they are also entitled to, in effect, to franchise other churches around the country and the exemption, the 501(c)(3) exemption then automatically applies to each and everyone of these churches that is organized pursuant to the ministries that are conferred by the Universal Life Church in California. The Internal Revenue Service has taken the position that the exemption does not apply to the other franchised or related churches but merely applies to the parent organization in California. In all events, the issues which we're dealing with in the case of the Universal Life Church cases, has to do with whether or not the entity is operated pursuant to the requirements in the statute, among which are that no personal benefits inure to the benefit of the individuals. And the problem is that here, once again, whenever we attempt to gain information as to what is happening to the money that goes to the Universal Life Church, in these significant contributions, in many cases we're immediately met by the fact that we're not entitled to inquire into the operations of the church because of the 501(c)(3) exemption on the parent church and also because of the doctrine of separation of church and State. Our position is and will continue to be, that we are entitled to make reasonable inquiry into how the funds of the church are being handled and to whom the benefits go from those—the expenditure of those funds and so on.

CASE OF MR. VALIENTE

(IRS response on page 396)

In the case of Mr. Valiente, he is following a typical pattern. He has filed a false W-4 claiming 35 exemptions, he has been reported as making the statement that the only way to handle the IRS is with shotguns and we don't agree with that. The 1980—or 1979 return is under summons enforcement for bank account information, so that we can follow the pattern of how the money is being spent. And so we will continue to pursue these issues in the courts. Although I recognize a very difficult situation here in which many, many legitimate churches around the country are expressing grave concerns over our attempting to make decisions about what constitutes a church and what does not constitute a church, we nonetheless believe that we are entitled to, and required by law, to make some sort of inquiry into whether or not the—the monies the resources of the church are being handled in such fashion as to be compatible with the statute.

Senator ABDNOR. Didn't Mr. Valiente have a statement saying that they had a ruling by the judge?

Mr. EGGER. There was a court decision Mr. Chairman, which held the mother church or parent church, in Modesto, Calif. as exempt. But our contention is that merely because they're exempt the mere fact that someone writes to the parent church and has conferred upon them a ministry, and then sets up their own branch of the church does not entitle them to a 501(c)(3) exemption.

Senator ABDNOR. Wouldn't that almost go back to the judge, the court to get that determination?

Mr. **Egger**. The issue is in court.

Senator **Abdnor**. Where?

Mr. **Egger**. The issue is in the Tax Court.

CASE OF DR. BELTON STEPHENS

(IRS response on page 397)

The last witness that I'll try to comment on is that of Dr. Stephens and I think, Mr. Chairman, members of the committee, I was as disturbed about the story that Dr. Stephens had to tell as you gentlemen were. I do not have all the details of this case. But rest assured that I will pursue it. I want to know why we had such a procedural mixup in the case and I will assure you that we will do that and, if Dr. Stephens furnishes us a waiver, I will make a further statement on the record with regards to what happened in his case.

In general I would like to add, Mr. Chairman, that the record be kept open long enough for us to include any other statements with respect to the taxpayers who have testified here and who have filed waivers with us so that we can be sure there is a full and complete record with regards to each of the various issues that has been brought up here.

Senator **Stevens**. How long do you want, Mr. Commissioner?

Mr. **Egger**. Well, I shouldn't think that it would take more than 30 days, 45 days, something like that.

Senator **Stevens**. We do want to get the hearing record closed because we want to be able to get it printed if we can; 30 days would be agreeable to me.

Senator **Abdnor**. Certainly ought to be able to do it in 30 days.

Senator **Stevens**. It would apply to all witnesses.

Mr. **Egger**. Yes. We'll make every effort to complete it as soon as we can possibly do it.

That is, so far as I'm concerned, is the end of any specific statements that I need to make on these witnesses here. I'll be happy then to attempt to answer any questions or comments that you might have.

Senator **Abdnor**. Well, Mr. Commissioner, I appreciate your statement and the fact that you went down one by one on these; I really didn't expect that.

The only thing that comes through to me while you were talking is almost like maybe the IRS is infallible. You know, when you've got thousands of people working for you, there isn't anyone beyond maybe even becoming overabusive through no fault of yours. It might be right down the line. I think sometimes we admit that these things could happen, that maybe once in a while there is a mistake. You sort of said so I guess, with Dr. Stephens. I think that's a crime and I think that's the kind of thing you ought to look into sometime. That was pretty apparent. You know, I've run into law enforcement people all my life and I come from a small community and I know sometimes the minute you get a new person in a job, they like to show their ability and sometimes they can get abusive and I don't think it would hurt—have you ever had to reprimand anybody in your agency? Have you, in the time that you've worked, have you ever pulled anybody to the side and told them, "Maybe you're over doing this"?

Mr. **Carlson**. Yes, sir.

Senator **Abdnor**. Have you ever had to let someone go because of it?

Mr. **Carlson**. I can't recall a specific instance right now.

Senator **Abdnor**. I mean, you know, I don't know how many thousands of people must be with the IRS and I'm just saying that by golly, it's very possible sometimes that it could be the fault of the IRS and that they have gone too far and they are abusive and I know you have to be firm. You have to be—but nevertheless, I think sometimes we get too protective of our people instead of being concerned enough to see what the problem might be in some of these instances. Because you do have a lot of problems, an extraordinary amount of problems and you probably need every bit of it. But at the same time it's got to be very carefully handled and not be abused and taken advantage of the people. We get all kinds of reports, I hear there's a disproportionate number of clutch and enforcement actions among the IRS district. Is that true? Do you keep them pretty well balanced? Do you ever find that we have—maybe you're overly—you have an overlarge number of enforcement officers in a district who may be more than necessary? I guess you have more than one district, so I should probably ask the Commissioner.

Do you find areas when you come into the office and review that maybe you were not balanced out as well as you might be?

Mr. **Egger**. We allocate personnel, apportion personnel from time to time and each year we take a look at it to see where we should place our emphasis or where some particular district or region needs more or less and we're constantly doing that. We're looking at it now because of the shift in population and taxpayer population from the Northeast down to the Sun Belt and those kinds of factors that affect it.

I would like to say that it's been said here today that in Alaska we've done—we've had more seizures than we have in other parts of the country by—you know, proportionately. And we looked up the statistics and certainly last year and so far this year, if anything, it's the other way around. The number of seizures here in Alaska for fiscal 1980, as well as so far in 1981, have been below the national average rather than above them.

Senator **Abdnor**. On a per capita basis you mean?

Mr. **Egger**. On a percentage. We carry our statistics on the basis of each thousand cases that are closed out; that is, that are finally determined and out of a per thousand case basis in Alaska, our having resolved those cases by seizure is significantly below the national average for both 1980 and so far in 1981.

RATE OF SEIZURE IN ALASKA

Senator **Murkowski**. I might comment on a statement that was prepared by my staff which quotes the report of the Oversight Subcommittee of the House, Ways and Means Committee which indicated that Alaska has the highest rate of seizure in the United States. And I would be very happy to submit for the record the source of the material for that. I think that's generally an assumption that's been made by the media in Alaska as well, and this may have—I would assume is for the year 1979 or 1980.

Senator **Stevens**. 1978 and 1979.

Senator **Murkowski**. 1978 and 1979? I would defer to the senior Senator if you want to elaborate on that, Ted.

Senator **Stevens**. That was our information. That's really what led to this hearing, was to try and find out what caused that.

I have information, Mr. Commissioner, that prior to the start of the pipeline we had only about 13 auditors in the State and that as the pipeline started and the buildup came in the State, that we've now reached the position, we have about 53, 54. How many have we here now?

Mr. **Egger**. Are you speaking of revenue agents or auditors?

Senator **Stevens**. Auditors.

Mr. **Egger**. Tax auditors. We have the statistics here.

Right, we have 53 revenue agents and 21 tax auditors for a total of 76 in Alaska at this point.

Senator **Murkowski**. Could you tell us what the average per capita is outside of Alaska in comparison? It's my understanding it's obviously much higher up here and can you relate to the per capita up here vis-a-vis outside?

Mr. **Egger**. Let me just—I want to answer the question but I just wanted to state generally that we do not allocate examiners on a per capita basis. It's not done that way. It's done on the basis of the needs as they are developed, via our DIF scores. I said this morning that we go through the scoring of each tax return and the higher scored returns are the ones that are selected for examination.

Senator **Murkowski**. Well, in Alaska's case with the high income per capita as compared say in a Southern State, would you be inclined to put more revenue agents as a consequence of the potential tax recovery that you might have in the adjudication of various claims filed?

Mr. **Egger**. We wouldn't do it on that basis.

Senator **Murkowski**. Would that be part of your formula?

Mr. **Egger**. The level of income is a part of the DIF formula, yes, and therefore is a factor. But again, we don't allocate revenue agents on the basis of whether we're going to get higher dollars of collection but rather on the number of returns that we have to examine based on our DIF scoring, which we accumulate on a district-by-district basis.

Senator **Abdnor**. Mr. Carlson, how many agents—you probably know better than Mr. Egger—how much of an increase have you seen over the last couple of years?

Mr. **Carlson**. Well, I've just recently arrived here——

Senator **Abdnor**. Oh, I see.

Mr. **Carlson** [continuing]. But actually as far as staff years we're getting a reduction this year over last year. As the Commissioner has just mentioned, we had 53 revenue agents and 21 tax auditors.

Senator **Abdnor**. You had what?

Mr. **Carlson**. And our proposed allocations for this coming fiscal year 1982 will be 43 staff years in revenue agents and 17 staff years in auditors which may, considering lapse of positions, may come out to be a maximum of say, 50 revenue agents at a peak time and maybe around 20, 21 tax auditors. But in staff years, it may be 43 and 17.

Senator **Stevens**. I'm concerned, Mr. Commissioner, because of things like this statement in the—it's an old Readers Digest article, but it indicated that at one time, the IRS had an order that says, "We watch very closely the revenue officer who doesn't average at least one levy per week and one seizure per month." Do we still have quotas on these people?

Mr. EGGER. Not at all, and if I find them somebody's going to be sorry about it. We do not use quotas. In fact, to the contrary, our field managers are instructed very specifically that they are not to employ any such thing as quotas in the evaluation of any enforcement people.

Senator STEVENS. They said there was another order that said, "Levy at once on known sources of income, wages, bank accounts, et cetera, seize assets. The taxpayer car, home, business, et cetera. Make your first action to get the taxpayers' attention." It that still the policy of the IRS?

Mr. EGGER. It's like, "did you stop beating your wife." I've never known that it was the policy of the IRS. It certainly is not now.

Senator STEVENS. Well, you know, I really think that's why I'm glad you came up because to me to a great extent, I think our country has great roots in opposition to confiscatory taxes and I think a lot of the things we are hearing are the result of a period of extremely high taxation with everyone trying to find some way to get around it and we've turned the corner on that now by what we did yesterday. But it seems that the public needs a little reassurance that there is going to be some adjustment. I was told that we had 13 auditors here in 1973 and 8 years later we've got 53. Our population hasn't gone up that much and I really don't understand why we have—I guess they meant revenue agents. I don't understand what brought about that increase unless there was some feeling that with all of the construction and everything that was going on, that there were people who weren't properly reporting their income.

Mr. EGGER. I do not have knowledge of the statistics prior to 1979. We have the 1979-1981 statistics. Mr. Coates has them and I'd like him to get them into the record here so that we have that together with the rest of the seizures.

Mr. COATES. Fine. Senator, I don't have the figures on revenue agents and tax auditor staffing back to the years that you're referring to but we certainly will compile those and make them available for the record. I do have for the years of 1977 through the current year that we're speaking of; 53 on board. That the staff went something like this in revenue agents; 33, 45, 47 and 53. And there will be a decreased staffing in fiscal year 1982 coming up.

Senator STEVENS. You're up to 53 right now in 1981?

Mr. CARLSON. Yes, sir, in the tax auditor staffing during that time period and we will provide the earlier figures; 16, 18, 20, 21, and 15.

[The information follows:]

ANCHORAGE STAFFYEARS

Fiscal year	Revenue agent realized staffyears	Tax auditor realized staffyears
1970	16	5
1971	15	5
1972	15	6
1973	16	7
1974	17	9
1975	27	19
1976	36	16
1977	33	16
1978	45	18
1979	47	20
1980	53	21
1981 (annualized)	39	15

Senator STEVENS. Well, is it possible that the formula you use for the distribution of your work force doesn't reflect the fact that a lot of people who make money in Alaska, file their returns elsewhere and that the people who came up here and worked on the pipeline, most of them didn't become Alaskans. They filed their returns I take it, in the States from which they came.

DIF SCORE

Mr. COATES. Let me explain if I can just a little about the DIF score and how it works. Every individual return is scored at the time it is processed. The score is based on our taxpayer compliance measurement program and results and the score is indicative of what we feel is the potential change, the need for examination of that particular return. If we decide in a class that we're going to examine down to *x* score, a taxpayer whether he lives in Anchorage, Fairbanks, or Des Moines, Iowa, will still be examined because we examine through that particular score on a return.

Senator STEVENS. But in Alaska, as Senator Murkowski mentioned, since our incomes are higher because of the higher cost of living, we're going to have a different relationship to the DIF process, aren't we? Because a person that earned $10,000 outside would earn $15,000 here doing the same job, will be in a different bracket and a different level as far as your surveillance, won't it?

Mr. COATES. But every taxpayer throughout the country who earns $15,000 would have the same probability of being examined based on the DIF score. Now if the per capita income in Alaska is greater then obviously our coverage is greater and the higher income returns would fall out that way.

I'd like to if I can, just clear the record on the number of seizures. As the Commissioner pointed out in the State of Alaska, the number of seizures per 1,000 delinquent accounts disposed of during fiscal year 1980 and the first 6 months of 1981 in the State of Alaska, the number of seizures per 1,000 dispositions, ran 3.6 and 2.1 respectively. Now nationwide during that same period was 4.2 and 3.7. So the number of seizures actually made in the State of Alaska based on the number of delinquent accounts disposed of, is far below—not far below, but it's below the national average and is trending downward. I might also go ahead and say that the actual number of seizures in the State of Alaska during that period was 25 in fiscal year 1980 and for the first 6 months of 1981, 9 seizures.

Senator STEVENS. Well, they're coming down I understand that. I think it's probably because of the publicity that's been attended to it. Maybe we're a little late in these hearings; never can tell. But also the number of cases, the delinquent cases disposed of, would not be relevant unless you compared those to how many we have per capita, compared to say, California or Texas.

But the real problem I want to get at, Mr. Commissioner, if I can back up just one more, then I'll stop talking Mr. Chairman. It seems to me that running through this is a conflict between the people that are doing the auditing, the people that are doing the collection, and the people who are providing customer service for the IRS. And that we have the customer service people saying if you do it this way you're all right, and then you come along and we've got people that are involved in the auditing process and they question that and then there's a subsequent period when there's collection processes going on. And in each one of these cases, there's been a refund somewhere along the line that wasn't properly accounted for by the time this case got to the collection unit. And I wonder if that doesn't just raise a little flag saying, shouldn't we look at our internal IRS procedures and compel the collection people to run a check on a taxpayer through the area office, whatever it is, wherever that return would be, to see if there's a refund pending, because it does seem to me to be just unconscionable to be attaching peoples' assets when they themselves are waiting for a refund from the IRS and that's been brought up here several times. I think that that attachment should not be possible at all if there is a notation that there's a refund pending some prior years. At the very least they ought to get credit for that refund that the IRS has indicated is due.

Mr. EGGER. I am concerned as I told you before. The most explicit and the most detailed statement here was by Dr. Stephens in which he spelled out that he did receive the notices that go out from our service center and that he wrote back to the service center and the problem that I see there is why, when he wrote back to the service center, that didn't—that that didn't stop within the system. That should have brought everything to a halt right then and there.

TAXPAYER DELINQUENT ACCOUNT

Let me tell you how taxpayer delinquent account (TDA) situations arise. When we receive a tax return which is not fully paid, that is to say there's a balance due on it and a check for the full amount doesn't accompany the tax return, or when there is an additional assessment via an examination or in some other fashion in which a liability arises, an immediate notice is sent to the taxpayer from the service center. This notice says to the taxpayer in so many words, that you owe *x* dollars because of thus and so and we haven't received your payment. Please pay it. If you have already sent the payment then you can disregard the notice. Approximately 5 weeks later, the second notice goes out and this 5-week period permits the computer mechanism to have caught up and credited any payment received during that period. The second notice goes out and with that notice goes a rather complete statement of all the collection process and the procedures that we follow. After the second notice goes out then another 5-week period goes by and a third notice goes out and then if we still haven't received a response from the taxpayer—and by the way in each of the second and third notices, the taxpayer is invited to contact an individual, invited to come in and talk with us about an installment arrangement, or to come in and tell us that because of their financial circumstances that they can't meet the obligation right then and there. There is every opportunity given to the taxpayers to respond to our notices. After the third notice goes out, if in 4 weeks nothing happens, we send a so-called final notice and in this final notice, the taxpayer is advised that we still haven't heard from them. We want them to contact us. We want to settle the arrangement, but that if they aren't going to do it that they will receive no further notices and Internal Revenue Service has no choice except then to go forward with the levy. After that a period of about 5 weeks again goes by before we issue a TDA, taxpayer delinquency account. It is issued to the district director and assigned to one of the revenue officers or to the collection office to proceed.

TAXPAYER NOTICES

So there's a total of 18 weeks during which the taxpayer has received four separate notices of an account that's due and has been invited time and time again to come in and talk with us and to use every opportunity to try to come in and make an arrangement for the payment of that liability that is satisfactory to the taxpayer and pay reasonable respect to the Government's interest.

Now I submit that if that isn't adequate notice, if that isn't leaning over backward to make sure that the taxpayer's circumstances are given every consideration, then I really don't know what is. What we frequently hear is that well I never got the notices or I wrote back and nobody answered me and on and on and that's why I'm concerned with Dr. Stephens' case because he sent his back through certified mail and therefore there would be a complete record. But I'm concerned because in the State of Alaska, we are receiving only about 8 percent of these notices back, meaning they weren't delivered and that must mean that some 92 percent of them are being received. And if they're being received and we're not getting proper responses, then I do not know what else the IRS can do about that. More than 50 percent of the taxpayers in the State of Alaska have a post office box or some other arrangement whereby there's no identification as to their precise location of their residence. So that we're unable then and in other circumstances or appropriate circumstances to sometimes reach them. Many of the people living in remote regions up here do not have telephone service and so we can't reach them by phone. So there are all kinds of circumstances here that are different than they are perhaps elsewhere in the country. But I am still nonetheless concerned that we are—our notices are apparently being deposited someplace. They're apparently being delivered and we're not getting the responses that we should get. But that's the procedure that we follow.

Senator **Murkowski**. Excuse me. You have indicated that the reflection on seizures in Alaska by IRS are not really as high as perhaps they are perceived to be. I'm sure you're familiar with the *Oliver* case in Fairbanks.

Mr. **Egger**. I am so familiar with the *Oliver* case that I can't tell you, Senator.

Senator **Murkowski**. I am a resident of Fairbanks and I am quite familiar with that case too, and I was surprised to see it rewritten this year in the Sunday supplement of the Washington Post in Washington, D.C. It was truly an unfortunate situation and I'm sure that you would agree with that.

Mr. **Egger**. I will repeat, Senator Murkowski, that as I said this morning, perhaps before you arrived——

Senator **Murkowski**. I'm sorry if you've covered it.

Mr. **Egger**. No, no, I'd like to state again that in that case we made mistakes. They were bad judgment calls.

Senator **Murkowski**. I would like to refer to the Senate subcommittee report which I mentioned earlier and this is by Nancy Shoot of the State's news service and it reads as follows:

> The Subcommittee on Oversight says that the Alaska district of the IRS seized property or levied against accounts of tax delinquent businesses in 16 percent of the delinquencies settled in the first 9 months of last year. That's a higher percentage than in any other district in the country.
>
> Manhattan's tax collectors for example, seized or levied against property in only 16 percent of the tax delinquent cases settled in the same time period. Enforceable collections showed an alarming increase in fiscal year 1980, according to the subcommittee. Rates of seizures jumped 48 percent nationally from the same time period in 1979.

If this is accurate, it would seem to indicate that seizures on the contrary, are on the increase in Alaska at a rather alarming rate. If that's inaccurate, why——

Mr. **Egger**. Senator Murkowski, the report unfortunately has combined or confused or mixed up at least seizures and levies. They are two different things and we use them in an entirely different fashion. It is true that in the case of levies, we have had a——

[Audience Interruption.]

Mr. **Egger**. Mr. Chairman, may I be permitted to finish my statement?

Senator **Abdnor**. Please, you're out of order. Please, we don't need any comment.

Mr. **Egger**. In the case of levies here in Alaska, in fiscal year 1980, we did have a significantly higher number in this State than we did have in other districts.

SERVICE AND LEVY

Senator **Murkowski**. Would you explain the difference between a seizure and a levy for my benefit?

Mr. **Egger**. Yes, in the case of levies, it simply means filing a notice with an employer to levy on a salary or wages.

Senator **Murkowski**. So you're seizing the salary by the levy?

Mr. **Egger**. Well, in the case of seizure we use that term in connection with the actual taking of physical property.

Senator MURKOWSKI. Well, I know, but somebody's salary in many instances, is regarded as their personal property, but you do that by a levy. But that's how you seize it.

Mr. EGGER. That's correct.

Senator MURKOWSKI. OK. So the difference is kind of questionable?

Mr. EGGER. I'm simply explaining to you the manner in which I gave you the statistics earlier. I'm not trying to do other than that.

In that particular year, we levied on a large number of State of Alaska refunds. In that year, the State did away with their income tax and there were a significant number of refunds and we levied on those refunds in the case of many taxpayers who didn't have assets or other levy sources which we could reach. So that tended to expand the number of levies that we made in that particular year.

MULTIPLE LEVIES

Another thing that happened was that we learned that in this district, the practice was to issue what we call multiple levies. In other words, we would get six or eight W-2's from a particular taxpayer indicating that that taxpayer had worked for a number of employers during the course of the year and since we wouldn't know which employer he was working for, the district issued levies to all of those six, let's say. Now, in point of fact, if they—they can only work for one employer at a time typically, so only one of them will be affected. But nonetheless, all of those levies, notice of levies got into the statistics so that while our statistics for the State of Alaska—oh, by the way, I should say on the record, too, that once it was determined that that practice was being followed in this district, it was directed to be stopped because that is not consistent with our policies of a single notice of levy around the rest of the country. But it tended to exaggerate the number of levies and notice of levies in the State. It does not fully explain the significantly greater number up here in full. And we've been looking at the statistics for the last week or so trying to determine for ourselves, what gives rise to what will surely be even if we take out these exceptions, nevertheless, a somewhat higher level of levy notices in Alaska than elsewhere in the country. I still do not have the answer to that and I'm not sure that we will have an answer to it.

Senator MURKOWSKI. Well, wouldn't it appear to be the facts that the wages are so much higher but there's no consideration taken in your formula for the cost of living that's associated with Alaska? That's something that those of us in Alaska have learned is an inequity and injustice about Alaska, but it's a fact.

INCREASE IN MINIMUM LEVEL

Mr. EGGER. One of the things we are looking at and we believe we can do is to perhaps raise the level, the minimum level. In other words, our minimum level at the moment is $50 a week per taxpayer plus $15 for each dependent and I can agree with you immediately that that's far too low and certainly far too low in the State of Alaska. So we have determined that we're going to take a look at that and see whether it's possible for us to change that. I believe the initial opinion of our people here is that we do have the authority to change that without any statutory change. In all events, if we can, we're certainly going to look at it immediately. So that's one thing we can do that may help the situation a bit here.

COLA APPLICATION

Senator MURKOWSKI. You're familiar with the COLA application?

Mr. EGGER. Yes.

Senator MURKOWSKI. Cost of living for Federal employees in Alaska—some consideration should be given to the tax implications associated with that because the suggestion that there's necessarily more money left that will go further after the tax plight doesn't take into consideration the cost of living here with those remaining dollars. That's what I would point out.

Mr. COATES. Senator Murkowski, in working out installment arrangements, we would take into consideration, obviously, the higher cost of living in this area in terms of the hardship it would impose on the taxpayer.

Mr. EGGER. Let me say this, that the far, far majority of the cases where we file a notice of levy, we are able to work out installment arrangements with the taxpayers that are much more acceptable than our rules under the notices of levy. Very few cases actually get paid out under the levy arrangement.

Senator MURKOWSKI. I have two quick questions, if I may.

Congressman Young proposed a bill which would require IRS to secure a court order prior to seizing property for the payment of delinquent taxes. Would you care to comment on that? How do you feel that bill would affect your ability to operate within the IRS.

Mr. EGGER. Thank you. The statistics as to the number of those that we can issue in the course of the year escapes me for the moment, but it's something in the range of 9,500 seizures and 600,000 levies a year and it would be a tremendous burden on us to try to have to get court orders in that many cases. I think it would severely hamper our ability——

Senator MURKOWSKI. You'd have to get less court orders.

Mr. EGGER. Yes.

PR POLICY IN IRS

Senator MURKOWSKI. Do you have any public relation policy internally, or do you appropriate funds in your operations for public awareness of the facts that IRS is the tax collector of the land and tax collectors have always been subject to a good deal of criticism and scrutiny since biblical times, but it was brought out that you come in and you stand up and you feel apprehensive. Is there a conscious effort to try and make the taxpayer feel more welcome, since he supports IRS?

Mr. EGGER. Senator Murkowski, one of the things that I started in my term of office with, was a statement of a commitment on my part personally to try to do everything I could to turn the image of the Internal Revenue Service around, to make it more humanistic, to get closer to the people, to take the mystique out of the way we operate. I have asked all of our field executives to try to find opportunities to meet with these citizen groups with general audiences and so on rather than just the traditional practitioner groups in order to try to explain in lay terms how we do proceed and so that the taxpayers need not fear coming in for an audit of their return. They should certainly feel that we're a service and that we are there to be of service to the taxpayer public as well as to collect the taxes.

Senator ABDNOR. Well, we're running out of time, Commissioner, and I think we'll probably interview you in Fairbanks. We'll have additional questions. We have one more witness today that I want to call and I hope you'll stick around.

Our last witness is Mary Perry of the First National Bank of Anchorage and I'm going to ask Ms. Perry if she'd please come forward.

Thank you, gentlemen.

Senator MURKOWSKI. We'll look forward to seeing you in Fairbanks and I very much appreciate the fact that the Commission is going to be able to come up there. Is that right?

Mr. EGGER. I shall not be able to be there in Fairbanks, but the Assistant Commissioner, Phil Coates will be there.

Senator MURKOWSKI. And will Mr. Carlson be there?

Mr. EGGER. Mr. Carlson will be there.

NONDEPARTMENTAL WITNESSES

STATEMENT OF MARY PERRY

Senator **Abdnor**. Ms. Perry, we're happy to have you with us today. You may proceed as you wish.

You have statements there, do you?

Ms. **Perry**. Well, as to the bank, we're interested in the impact on the bank——

Senator **Abdnor**. Maybe you could state your name.

Ms. **Perry**. Mary Perry.

On the impact that the IRS summonses——

Senator **Abdnor**. I'm afraid you're going to be hard to hear. We may have to get you closer to that mike.

Ms. **Perry**. Mary Perry is my name, First National Bank of Anchorage. I'm a cashier.

Senator **Abdnor**. You may proceed.

IMPACT ON BANK FROM IRS SUMMONSES

Ms. **Perry**. We just want to state our side from the bank's standpoint of the impact that it puts on the bank when we are served with IRS summonses. The levies I can handle pretty well without too much problems. I would have something to say on those, but mainly concerned with the summonses. I have brought copies of the summonses that are served. I've taken out the taxpayer's names and this type of thing. But just so you can see the type of information that IRS is actually asking for.

Senator **Abdnor**. We'd like to have that for the record.

Ms. **Perry**. There's three copies.

If I might, I would just read through one, is that all right?

Senator **Abdnor**. Please do, yes.

Ms. **Perry**. This particular one they're asking for all records relating to the taxpayer's account for the years of 1976–78. They're requesting or demanding, I should say, those records to include but not limited to the following: checking and savings account records, controlled and maintained with the First National Bank or any of the records that the customer has signatory control over. They want signature cards for open and closed accounts maintained during that 3 years. All bank's ledger statements, deposit slips, items deposited to the account, canceled checks, withdrawal slips shown on the account, debit and credit memos on the ledger statements. They're also requesting time certificate of deposits, cashier's checks, and/or money orders purchased by or in the name or names shown on the levy or the summons, applications to purchase cashier's checks, items including checks, cash receipts, et cetera, used to purchase cashier's checks, and/or money orders, loan records to include loan applications, financial statements, tax returns and other related verification and documents, loan ledger cards that show a date of payment, amount paid and the allocation of payment as to the principal and the interest, loan agreements, cashier's checks of other instruments used to disburse the proceeds of loans, checks, cash receipt memos and other instruments used to make payments on the loan, documents disclosing security for loans, including mortgages, chattel mortgages, deeds of trusts, notes, correspondence, memoranda and notes relative to loans. And in the escrow and the collection area they're looking for all contracts and agreements, names and addresses to all parties of the escrow, account ledgers disclosing amount collected, and distribution between the principal and interest, and other allocations. Safety deposition box applications, records of entries form 1099's, letters of credit and related documents. That's just one.

Senator ABDNOR. How long would you guess it would take and how much manpower to obtain that kind of information?

Ms. PERRY. To do this particular one it would take many hours. There's one I picked up which took 66½ hours. We reproduced 1,564 items on that particular account. Another, just as a random choice, there was 23 hours of nothing but microfilm research work. We reproduced 438 items for that one account. But that's after we get to the microfilm department. Initially when the summons was served, it's accepted by an officer or a designated supervisor of the bank. We date and time it, we only have 10 days to answer them. However, with the Alaska State statutes, we are required to notify the taxpayer that is involved, that these records have been demanded. So either by the time I mail the letter to the taxpayer——

Senator ABDNOR. Without the State law, would it be safe to bet that the taxpayer would never know about it until the information was in the hands of the IRS?

Ms. PERRY. I really have no way of knowing that, but that's a relatively new law within the last few years.

I mail the letter to the taxpayer named. We start our research; many times then, that taxpayer will write us a letter and prohibit us from releasing information and I honor that letter. I tell IRS I have a letter of intervention. We stop, they stop, they go to court, they take me to court, I've had a summons to U.S. court with *United States of America* v. *Mary Perry,* and *United States of America* v. *Mary Perry as the vice president of First National,* naming me as the officer, as well as an individual and I objected to that and the court did not take too much notice of that. They go to court regardless. They get their—invariably, their court order that is in turn served on us to honor and comply with the summons, therefore we do it.

Senator ABDNOR. How many of these summons requests do you get?

Ms. PERRY. We're working on 41 actively at the moment.

Senator ABDNOR. At the moment?

Ms. PERRY. And——

COST TO BANK OF SUMMONSES

Senator ABDNOR. What does that cost the bank?

Ms. PERRY [continuing]. Just untold dollars and the man-hours involved is just—I can't even guess the percentage overall. We have 22 offices, we have a centralized escrow department, they have 25,000 escrows. Each escrow might have at least the first two parties and there may be a dozen and it just goes on and on. There has to be an answer to this. We just can't live with it.

Senator **Abdnor**. You can get arrested if you fail to comply?

Ms. **Perry**. Yes, so I am told.

Senator **Abdnor**. You haven't been arrested yet?

Ms. **Perry**. Well, I went to court to try and get my name off of the one particular subpena as an individual, and that wasn't done either. The court order does come back and say that you're subject to arrest if you do not comply with the court order and this type of thing. I'm not really overly concerned that I'm going to spend the night in jail yet, but it's the work, the man-hours, everything that they're wanting, they're listing—if the customers walked in the door at any time literally with whatever piece of paper, we have to try and reproduce that piece of paper.

The summonses have changed over these last several years. They used to say they wanted the corporate resolution, the signature cards, bank statements for perhaps 1 year and that was about it. But now, they want every memo that was ever written regarding that loan.

Senator **Abdnor**. A customer can't put a stop to it all?

Ms. **Perry**. If the customer acknowledges the letter that I sent him which we try to do immediately, and writes me a letter and says, stop, I stop. And I don't do anything until the IRS goes to court, they get their court order, and we are then served with the court order.

TAXPAYER COOPERATION ON SUMMONSES

Senator **Abdnor**. Do most of your customers ask you not to cooperate?

Ms. **Perry**. Yes. Yes, a greater part of them now are sending us a letter and I think it's mainly because they have been made more aware lately, that they have the right to say, "First National, don't release my records."

Senator **Abdnor**. Well, you're a big bank. Maybe you're not familiar, but there must be many small banks in Alaska like we have in South Dakota. Do they receive the same kind of notices and are they in a position to do all the microfilming and everything like you are here in Anchorage?

Ms. **Perry**. I would assume that all of the banks, and I would have strong reason to believe that they all receive the same type of thing that we do from IRS, they may not have as large and perhaps as sophisticated microfilm retrieval as we do, but they're still going to have to reproduce those records.

Senator **Abdnor**. That must be a tremendous cost.

Ms. **Perry**. It is. It's a tremendous cost.

Senator **Abdnor**. And someone must be picking it up. The customer?

Ms. **Perry**. Well, the IRS now pays us $5 an hour plus 10 cents a copy for each thing we reproduce.

Senator **Abdnor**. How many people do you have working on it?

Ms. **Perry**. In the microfilm department, we have a supervisor and three on her crew; 75 percent of that time of those four people have been on nothing but summonses since the first of the year.

Senator ABDNOR. You have 41 or 42 in the process right now?

Ms. PERRY. Yes.

Senator ABDNOR. Is that an average amount throughout the year?

Ms. PERRY. Well, since the first of the year we've gotten a lot more and even the latter part of last year than we've ever had at any one time. I have three in process right now.

Another problem comes up. These three were served that has taxpayers names. There's no address, there's no account numbers, there's nothing to identify. I don't know that I don't have a closed account for them. They're going back for perhaps 3 or 5 years or maybe longer. I can't mail the letter to the customer until I know that he was a customer, and I don't have an address for him and he only has 10 days to give me that letter of intervention. And I have three right now that I'm unable to send a letter to because I don't know who they are.

Senator ABDNOR. What will happen? How do you eventually come out of a situation like that? What do you do?

Ms. PERRY. I'm going to call IRS and tell them I need some way to identify these people. I don't think that I should have to search the closed records of 22 offices looking for these three names.

Senator ABDNOR. Senator Stevens?

Senator STEVENS. I'm sorry. I had to go to my office, Mr. Chairman.

I've heard about this testimony and the letter that was presented. It seems that this too needs some analysis of our committee and perhaps the Lynch committee to determine whether this kind of paperwork doesn't come within the current task force jurisdiction that the Vice President is heading up on terms of the total workload that the Government is putting on the private sector and how some of that burden can be reduced.

You're given a copy of one of these summonses. Right?

Ms. PERRY. Yes.

Senator STEVENS. Do they then tell you to produce all the statements and canceled checks and deposit slips in your possession?

Ms. PERRY. Yes, yes, they do.

Senator STEVENS. And they've asked the taxpayer for them too, I assume?

Ms. PERRY. I assume so. I certainly hope so. They tell us that they normally only come to us when they can't get them from the taxpayer. However, the taxpayer in many cases, tells us the opposite. They'd have the records if they'd only ask for them.

Senator STEVENS. Well, that's a substantial burden on a bank. You do have a sizeable bank but in any event, it's a sizeable burden too.

Ms. PERRY. Well, this was put together very rapidly this morning and it's just a very, very brief sampling.

Senator ABDNOR. How long has this sort of thing been going on?

Ms. PERRY. I would say it's been growing in volume considerably in the past year, year and a half.

Senator ABDNOR. Well, Ms. Perry, we certainly thank you.

Senator STEVENS. We certainly thank you.

Senator ABDNOR. This is very valuable information.

Ms. **Perry**. If you need anything more I will be glad to produce it for you.

Senator **Abdnor**. Thank you very, very much. The subcommittee is aware of the large amounts of paperwork that the Government is placing on the private sector. One solution in getting the Government off the back of business is to reduce the amount of paperwork.

Ms. **Perry**. I have about two or three file cabinets with envelopes that are about this big, that thick with nothing but microfilm work in it waiting for the cases to be concluded and the work delivered.

Senator **Abdnor**. What percent do you suppose you receive of the actual costs? It must cost you considerably more than the $5 an hour you're getting paid. Could you make a guess?

Ms. **Perry**. The actual cost to the entire bank overall, I would hate to guess. I just don't have those figures. We do charge less than half of what our normal fee is to the general public if they've lost their statements and want them reproduced.

Senator **Abdnor**. You don't have much to say about that, you take what they give you, is that——

Ms. **Perry**. We don't have hardly anything to say about it.

Senator **Abdnor**. Thank you.

Ms. **Perry**. This is the original that I'll leave.

Senator **Abdnor**. All right, fine; we'd like to have that.

[Reference material submitted by Mary Perry follows:]

MATERIAL SUBMITTED BY MARY PERRY

August 4, 1931

U.S. Senate Subcommittee
Federal Court Building
701 C Street
Anchorage, Alaska 99510

RE: IRS Summons

Gentlemen:

The First National Bank of Anchorage is presenting random samples of summonses served by the IRS. We are currently conducting research on forty-one such summonses. The impact on the bank due to the summonses is extraordinary.

We have a Microfilm Department that consists of three people, plus one supervisor. Since approximately the first of 1981, 75% of all research time is used in connection with these summonses. The acceptance on the initial research on the summons is conducted by supervisory personnel which requires several hours of research before the order goes to the Microfilm Department.

Generally, the summonses cover a period of approximately three to five years. The depth and scope of the summonses are so broad that it is unwielding and seems to be unreasonable.

On one particular occasion, approximately twenty-five summonses were served. A total of 129 accounts were listed to be researched. This research involved twenty-two offices, plus our centralized Escrow Department and included both open and closed accounts. Due to the nature of escrow records, the summonses required the bank reveal other individuals information as well as the tax payers whose records have been summoned. This in turn creates a problem for the bank, as we will refuse to release that information. On occasion, the Escrow Department is questioned regarding a payment made in cash. IRS agents demand to know who actually made the payment. This information is extremely difficult to produce and requires extensive research by the Escrow Department, as well as microfilm research.

We do not know at the time we are served if our bank ever had the account, yet to comply with Alaska statutes, we must notify the individuals named on the summonses informing them of the summons and identify the records demanded. On many occasions the individuals involved on the summonses will notify the bank in writing that no information is to be released from our bank. These cases go to court at a later date for a hearing and invariably a court order is issued ordering the bank to comply with the summons.

As an example, one account required 23 hours of microfilm research with our reproducing 438 items. Another account required 66-1/2 hours of microfilm research with 1,564 items being reproduced.

The man hours required for this research is excessive. The IRS reimburses the bank at the rate of $5 per hour, plus 10¢ per copy.

Sincerely,

Mary Perry (Mrs.)
Cashier

Form 2039-A
(Rev. Nov. 1979)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

Internal Revenue District of Anchorage Periods 1978, 1979

The Commissioner of Internal Revenue

To Kay T. Bolt, Assistant Cashier

At First National Bank of Anchorage, 646 W. 4th Ave., Anchorage, Alaska 99501

You are hereby summoned and required to appear before Terence Zeznock an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All bank statements, cancelled checks, deposit slips and copies of checks which make up amounts on deposit slips, of the above named taxpayer or accounts for which the above named taxpayer has signatory control, in your possession, custody or control which reflect transactions in the checking, savings, and loan accounts with the First National Bank of Anchorage, located at 646 W. 4th Avenue, Anchorage, Alaska 99501 or any of its branch offices for calendar years 1978 and 1979. This is to include, but it is not limited to account # [redacted], # [redacted] and an account under the name, The [redacted], # [redacted].

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street, Anchorage, Alaska 99501

Place and time for appearance:

at First National Bank of Anchorage, 646 W. 4th Ave., Anchorage, Alaska 99501

on the 13th day of April, 1981 at 10:30 o'clock A M.

Issued under authority of the Internal Revenue Code this 24th day of March, 1981

Terence M. Zeznock — Signature of Issuing Officer
Revenue Agent — Title

Darwyn L. Pearl — Signature of Approving Officer (if applicable)
Revenue Agent/acting Group Manager — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-79)

Form 2039-A
(Rev. Nov. 1979)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of rage, Alaska 99509

Internal Revenue District of Anchorage, Alaska

Periods Periods ending December 31, 1974, 1975, 1976, 1977, 1978 and 1979.

The Commissioner of Internal Revenue

To First National Bank of Anchorage
At P. O. Box 720, Anchorage, Alaska 99510

You are hereby summoned and required to appear before Mary C. Romero or David Patnoe an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data

All books and records relating to income and expenses of for the periods ending December 31, 1974; December 31, 1975; December 31, 1976; December 31, 1977; December 31, 1978 and December 31, 1979. By way of illustration, but not limitation, these records shall include the following:

1. General ledgers, accounts receivable and payable ledgers, notes receivable and payable ledgers, cash receipts and disbursements journals, check registers and/or check stubs and any other general or subsidiary journals or ledgers relating to assets, liabilities, income and expenses for this period.
2. Bank statements for all checking, savings, and TCD bank accounts, cancelled checks, savings account ledgers, withdrawal slips, deposit slips, and bank debit or credit memorandums for this period.
3. Receipts for all monies received, Forms 1099 for income.
4. Expense invoices, lease agreements, loan files, freight and storage contracts, payroll records, and any other pertinent records relating to expenses incurred during this period.
5. Accountant's workpapers, retained copies of corporate income and employment tax returns, financial statements, and any other pertinent documents or workpapers relating to the preparation of any income or employment tax returns for this period.
6. Articles of Incorporation, corporate minute book, stock transfer ledger, resolutions and by-laws.
7. Contracts for purchases and sales of business fixed assets.
8. All loan and other records of transactions between stockholders and corporation.
9. Job contracts for customers.

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street, Suite 602, Anchorage, Alaska 99510 271-4286

Place and time for appearance:

at 310 K Street, Suite 602, Anchorage, Alaska

on the 11th day of May, 19 81 at 9:00 o'clock AM M.

Issued under authority of the Internal Revenue Code this 22nd day of April, 19 81

Mary C. Romero — Revenue Officer
Signature of Issuing Officer — Title

Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-78)

(Rev. Nov. 1979) **Summons**

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

Internal Revenue District of Anchorage Periods 1978, 1979 and 1980

The Commissioner of Internal Revenue

To Kay J. Belt, Assistant Cashier

At First National Bank of Anchorage, 646 West 4th Ave., Anchorage, AK

You are hereby summoned and required to appear before Terence Zeznock, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All bank statements, cancelled checks, deposit slips, copies of checks comprising deposit slips and signature card of the above-named taxpayer and accounts for which the above-named taxpayer has signatory control, in your possession, custody or control, which reflect transactions in the savings, checking and loan accounts with First National Bank of Anchorage, 646 West 4th Ave., Anchorage, AK and any of its branch offices for calendar years 1978, 1979 and 1980.

Loan applications for calendar years 1978, 1979 and 1980.

Business address and telephone number of Internal Revenue Service officer named above:

Suite 301, 310 K Street, Anchorage, AK 271-4265

Place and time for appearance:

at Suite 301, 310 K Street, Anchorage, AK

on the 29th day of May, 19 81 at 9 o'clock A. M.

Issued under authority of the Internal Revenue Code this 11 day of May, 19 81

Terence M Zeznock — Revenue Agent
Signature of Issuing Officer — Title

Pat I Mitry — Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-79)

The First National Bank of Anchorage • P.O. Box 720 • Anchorage, Alaska 99510

(Rev. Nov. 1979) **Summons** Internal Revenue Service

In the matter of the tax liability of . d, Alaska 99503

Internal Revenue District of Anchorage, Alaska Periods Calendar years ending December 31, 1976, 1977, 1978 and 197

The Commissioner of Internal Revenue

To First National Bank of Anchorage
At Box 720, Anchorage, Alaska 99510

You are hereby summoned and required to appear before Mary C. Romero or David Patnoe an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identifie above for the periods shown and to bring with you and produce for examination the followi and other data

All books and records relating to income and expenses of for the periods ending December 31, 1976; December 31, 1977; December 31, 1978 and December 31, 1979. By way of illustration, but not limitation, these records shall include the following:

1. General ledgers, accounts receivable and payable ledgers, notes receivable and payable ledgers, cash receipts and disbursements journals, check registers and/or check stubs and any other general or subsidiary journals or ledgers relating to assets, liabilities, income and expenses for this period.
2. Bank statements for all checking, savings, and TCD bank accounts, cancelled checks, savings account ledgers, withdrawal slips, deposit slips, and bank debit or credit memorandums for this period.
3. Receipts for all monies received, Forms 1099 for income.
4. Expense invoices, lease agreements, loan files, freight and storage contracts, payroll records, and any other pertinent records relating to expenses incurred during this period.
5. Accountant's workpapers, retained copies of corporate income and employment tax returns, financial statements, and any other pertinent documents or workpapers relating to the preparation of any income or employment tax returns for this period.
6. Articles of Incorporation, corporate minute book, stock transfer ledger, resolutions and by-laws.
7. Contracts for purchases and sales of business fixed assets.
8. All loan and other records of transactions between stockholders and corporation.
9. Job contracts for customers.

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street, Suite 602, Anchorage, Alaska 99501 271-4286

Place and time for appearance:

at 310 K Street, Suite 602, Anchorage, Alaska

on the 11a day of May, 19 81 at 9:00 o'clock A M

Issued under authority of the Internal Revenue Code this 22nd day of April, 19 81

Signature of Issuing Officer — Revenue Officer
Title

Signature of Approving Officer (if applicable) — Group Manager
Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-79

(Rev. 11-78)

SUMMONS

Department of the Treasury
Internal Revenue Service

6-15-80
[illegible]
3:10 P.M.

In the matter of the tax liability of ______________________

Internal Revenue District of Anchorage   Periods 1976, 1977, 1978

The Commissioner of Internal Revenue

To ______________________
First National Bank of Anchorage
At 646 W. 4th
Anchorage, AK

You are hereby summoned and required to appear before Curt Wehrmann, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All records relating to   for the years 1976, 1977 and 1978 to include but not limited to the following:

1) Checking and Savings Accounts maintained, controlled and/or having signatory authority by above named individual(s).

   a) Signature cards for open and/or closed accounts maintained during the period shown above.

   b) Bank ledger statements for the periods shown above

   c) Deposit slips and items deposited shown on the ledger statements requested in Item No. 1 b.

   d) Canceled checks and withdrawal slips shown on the ledger statements requested in Item No. 1 b.

   e) Debit and credit memos shown on the ledger statements request in Item No. 1 b.

See page 2

Business address and telephone number of Internal Revenue Service officer named above:

310 "K" St., Suite 207, Anchorage, AK 99501 (907)271-4292

Place and time for appearance:

at 310 "K" St., Suite 207, Anchorage, AK 99501

on the 2nd day of July, 1980 at 10 o'clock A. M.

Issued under authority of the Internal Revenue Code this 13th day of June, 1980

Curtis H. W[illegible] Special Agent
Signature of Issuing Officer Title

Raymond [illegible] Acting Group Manager
Signature of Approving Officer (if applicable) Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-78)

Form 2039 A
(Rev. Nov. 1979)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Number 1 through Number 13 as shown below

Internal Revenue District of Anchorage Periods 1977, 1978 and 1979

The Commissioner of Internal Revenue

MARJORIE KING - ASSISTANT VICE PRESIDENT AND

To First National Bank of Anchorage

At Anchorage, Alaska

You are hereby summoned and required to appear before Patrick McGuire an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All records as specified below for any and all of the below named individual(s) or entities for the period(s) September 1, 1976 through October 31, 1980 This includes not only accounts in the names of these persons or entities but also accounts under the signatory control of these individuals or entiti [redacted]

Individuals or entities:
1
2
3
4
5
6
7
8
9
10
11
12
13

1. Checking and Savings Accounts maintained, controlled and/or having signatory authority by the above named individual(s) or entities.
   - a) Signature cards for open and/or closed accounts maintained during the period(s) shown above.
   - b) Bank ledger statements for the period(s) shown above.
   - c) Deposit slips and items deposited for all amounts shown on the ledger statements requested in Item No. 1 b.
   - d) Canceled checks and withdrawal slips for all amounts shown on the ledger statements requested in Item No. 1 b.
   - e) Debit and credit memos for all amounts shown on the ledger statements requested in Item No. 1 b.

See Page 2

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street Anchorage, Alaska 99501 (907) 271-4300

Place and time for appearance:

at 310 K Street Anchorage, Alaska

on the 9th day of December, 1980 at 10:00 o'clock A M.

Issued under authority of the Internal Revenue Code this 18th day of November, 1980

Patrick C. McGuire — Revenue Agent
Signature of Issuing Officer — Title

Robert A Jackson — Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-79)

Form 2039-A
(Rev. Nov. 1979)

Summons

In the matter of the tax liability of Number 1 to 5 as shown below

Internal Revenue District of Anchorage Periods 1977, 1978, 1979

The Commissioner of Internal Revenue

To MARJORIE KING – ASSISTANT VICE PRESIDENT AND First National Bank of Anchorage

At Anchorage, Alaska

You are hereby summoned and required to appear before Jerry Barnard, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data

All records as specified below for any and all of the below named individuals(s) or entities for the period(s) January 1, 1977 to October 31, 1980 . This includes not only accounts in the names of these persons or entities but also accounts under the signatory control of these individuals or entities.

Individuals or entities:
1)
2)
3)
4)
5)

1. Checking and Savings Accounts maintained, controlled and/or having signatory authority by the above named individual(s) or entities.
   a) Signature cards for open and/or closed accounts maintained during the period(s) shown above.
   b) Bank ledger statements for the period(s) shown above.
   c) Deposit slips and items deposited for all amounts shown on the ledger statements requested in Item No. 1 b.
   d) Canceled checks and withdrawal slips for all amounts shown on the ledger statements requested in Item No. 1 b.
   e) Debit and credit memos for all amounts shown on the ledger statements requested in Item No. 1 b.

See Page 2

Business address and telephone number of Internal Revenue Service officer named above:

310 K Street Anchorage, Alaska 99501 (907) 271-4300

Place and time for appearance:

at 310 K Street Anchorage, Alaska

on the 9th day of December, 19 80 at 10:00 o'clock A M.

Issued under authority of the Internal Revenue Code this 18th day of November, 19 80

Jerry Barnard — Revenue Agent
Signature of Issuing Officer — Title

Robert A Jackson — Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-79)

. (Page 2 for all preceding summonses.)

2) Time Certificates of Deposits.

3) Cashier's checks and/or money orders purchased by or in the names shown above.

4) Applications to purchase cashier's checks and/or money orders. Items including checks, cash receipts, etc., used to purchase cashier's checks and/or money orders.

5) Loan records to include:

   a) Loan application forms, financial statements, tax returns and related verification documents.

   b) Loan ledger cards which show dates of payments, amounts paid, and allocation of payments as to principal and interest.

   c) Loan agreements.

   d) Cashier's checks or other instruments used to disburse proceeds of loans.

   e) Checks, cash receipts memo or other instruments used to make payments on loans.

   f) Documents disclosing security for loans including mortgages, chattel mortgages, deeds of trust and notes, etc.

   g) Correspondence, memoranda and notes relative to the loans.

6) Escrow and Collection account records to include:

   a) Contracts or agreements.

   b) Names and addresses of parties to escrow.

   c) Account ledger disclosing amount collected and distribution between principal and interest and other allocations.

   d) Disbursement records including: Bank Cashiers' checks, drafts, transfers, loan repayments, etc.

   e) Items including checks, cash receipts, etc., used to make payments to escrow or collection accounts.

7) Safe deposit box application and records of entry.

8) Forms 1099

9) Letters of credit and related documents.

SUBCOMMITTEE RECESS

This concludes our hearings here in Anchorage. The subcommittee is scheduled to meet in Fairbanks for additional hearings and witnesses. We thank everyone for participating. It's been a lengthy hearing and all the material we heard today will be compiled in a record and submitted to the proper committees. Some of it is not within the jurisdiction of this subcommittee as was pointed out earlier, but we do appreciate everyone's attendance and participation. Thank you very much.

[Whereupon at 4 p.m., Tuesday, August 4, the hearing was recessed to reconvene at 8 a.m. at the Federal Court Building, Fairbanks, Alaska on Thursday, August 6.]

IRS PROCEDURES AND OPERATIONS IN ALASKA

THURSDAY, AUGUST 6, 1981

U.S. Senate,
Subcommittee on Treasury, Postal
Service and General Government,
Committee on Appropriations,
Fairbanks, Alaska.

The subcommittee met at 8 a.m. in the Federal Court Building, Fairbanks, Alaska, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor and Stevens; also present: Senator Murkowski.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

STATEMENT OF PHILIP E. COATES, ASSISTANT COMMISSIONER FOR COMPLIANCE, POLICY AND PROGRAM DIRECTION FOR SERVICES COLLECTION, EXAMINATION AND CRIMINAL INVESTIGATION DIVISION

ACCOMPANIED BY:

THOMAS CARDOZA, REGIONAL COMMISSIONER FOR WESTERN REGION, STATE OF ALASKA

JOHN CARLSON, DISTRICT DIRECTOR, ANCHORAGE DISTRICT

INTRODUCTION AND STATEMENTS OF SENATORS

Senator Abdnor. This is the Senate Appropriations Subcommittee for the U.S. Treasury, which includes the IRS. This is a continuation of hearings that we held in Anchorage, and today we're here in Fairbanks. As chairman of the subcommittee, I not only feel like we are accomplishing something by our hearing, but I'm also enjoying the beauty of your great State, Senator. Senators Stevens and Murkowski asked us to come here for these hearings. We're delighted to be here. At this time, I see we have a number of witnesses with us, but I would first like to call on Senator Stevens.

STATEMENT OF SENATOR STEVENS

Senator Stevens. Thank you, Mr. Chairman. I'm delighted that you would come to visit our State, and also conduct these hearings. I think it's most important that we try to outline the scope of these hearings to the witnesses that appear today. We are not a subcommittee on constitutional affairs. We cannot look into constitutional questions. We have an oversight responsibility as far as the operations of the Internal Revenue Service and the procedures that they have followed.

Many people in Anchorage sought to raise with us constitutional questions as to whether the Federal Government had any power to tax, or whether the taxes were, in fact, constitutional; those are beyond the scope of our inquiry, and beyond the scope of the jurisdiction of our committee.

So, I would hope, Mr. Chairman, that the witnesses here would recognize that. We are trying to determine whether the procedures, themselves, or the enforcement that is done pursuant to the procedures in Alaska has led to claims of harassment or actual harassment of our citizens by the Internal Revenue Service as they carry out the duties that Congress has assigned to them. We all know that they have extraordinary powers, and we have the feeling that those people who have extraordinary powers must be extraordinary people, and must enforce those powers with a great deal of discretion.

We hope to have a record to continue our dialog with the Internal Revenue Service. The commissioner was with us in Anchorage, and the assistant commissioner of the Internal Revenue Service is here today. And we hope that through the process of these hearings, Mr. Chairman, that you've agreed to conduct, we can get a better understanding of the problems that we've encountered here in Alaska and convince the Internal Revenue Service to modify either some of their procedures or the enforcement activities that are undertaken pursuant to those procedures.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you. Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I'm certainly pleased to join with my colleague, Senator Stevens, and it's a particular pleasure to have you, Mr. Chairman, in our State. South Dakota's a long way away, but on the other hand, it's just a few hours' sit. I think you've had an opportunity to see a good portion of our State, and before your tour is through, why, hopefully you'll see a little bit more.

In these hearings we have focused on the collection activities of the Internal Revenue Service in the State of Alaska. The hearing held in Anchorage the day before yesterday was most beneficial. However, serious complaints and allegations have been made in recent years regarding techniques used by the IRS to collect deliquent payments owed the Federal Government.

Now, I'm concerned that these allegations and the numbers of complaints I have heard from Alaska residents are excessive. I recognize, of course, the perils of the tax collectors who have been with us since Biblical times, and oftentimes there's an overexuberance in the response of some of our citizens. But, in any effect, seizure of real and personal property is certainly the final step in the collection process of the Internal Revenue Service, which includes the establishment of installment, repayment plans, levies, and the placements of liens on property.

Earlier this year, a report by the Oversight Subcommittee of the House Ways and Means Committee indicated that Alaska has the highest rate of seizures in the United States. I'm interested to know, of course, if and why this is the case.

I view this hearing as an opportunity to explore the allegations that have been made against the Internal Revenue Service in Alaska. The presentation of constructive testimony here today will greatly facilitate an understanding of the problems of collection in Alaska, and help us as Members of Congress to find a solution to these problems. It is important that Congress review and make a determination about such complaints, because our tax system depends upon the voluntary cooperation of our citizens. If our citizens lose confidence in the fundamental fairness of the tax laws, or the way in which they are administered, we may not be able to rely on voluntary citizen support in the future.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you. Also with us today is Philip E. Coates, who is the Assistant Commissioner of the Internal Revenue Service. As Senator Stevens mentioned, in our first hearing, Commissioner Egger was here and had to return.

Mr. Coates, would you care to make a brief statement at this time? We'll have you back a little later in the afternoon.

STATEMENT OF PHILIP E. COATES, ASSISTANT COMMISSIONER, IRS

Mr. COATES. Mr. Chairman, members of the subcommittee, Commissioner Egger asked me again to express his regrets that he couldn't be here today. He felt that the hearings in Anchorage on Tuesday were worthwhile hearings and would like to have continued with you today in Fairbanks, but unfortunately had a prior commitment and had to return to Washington.

I would like, at his request, to introduce the same opening statement, which is the Commissioner's personal statement that he used in the Anchorage hearings.

Senator ABDNOR. Go right ahead.

Mr. COATES. As the Assistant Commissioner of Compliance and as Commissioner Egger's representative, I am pleased to appear before you today to discuss the Internal Revenue Service's operations in Alaska and the procedures and policies on which these operations are based.

INTRODUCTION OF ASSOCIATES

Also present with me today is Thomas A. Cardoza, the Regional Commissioner for our Western Region, which includes the State of Alaska, as well as Mr. John Carlson, District Director of the Anchorage District. Mr. Cardoza and Mr. Carlson are directly responsible for the management of IRS activities in the State of Alaska.

I would like to commend the members of this committee for giving me an opportunity to discuss the IRS operations in this kind of public forum. Certainly, one of my highest priorities as Commissioner is to do all I can do to bolster public confidence in our system.

I have asked our executives around the country to make a greater effort to talk more openly about how the Internal Revenue Service does its work, and try to take some of the mystique out of the way the IRS operates. More citizens of our country have direct contact with the IRS than any other agency of the Federal Government, and they have a right to know how we do our work.

IRS OPERATIONS IN ALASKA

I would like to start by giving a brief sketch of IRS operations in Alaska. In fiscal year 1980, Alaskan taxpayers filed 175,649 individual income tax returns with total revenue collections of $824 million. The IRS issued more than 140,000 refunds, amounting to $166 million to these taxpayers. The IRS District Office in Alaska has a staff of approximately 200. There are 39 revenue agents, 15 tax auditors, 13 special agents, and 24 revenue officers, who work directly on enforcement activities with the rest of the total staff serving in support, appeals, and service activities, including a taxpayer service staff of 16, which completed 121,476 requests for assistance by way of telephone and walk-in contacts in fiscal year 1980.

We conducted 7,221 examinations of Alaska individual returns in fiscal year 1980. Special agents of the Criminal Investigation Division in Anchorage conducted a total of 35 criminal investigations in fiscal year 1980. In addition, Collection Division activities resulted in the disposition of 6,966 taxpayer delinquent accounts and the securing of 3,521 delinquent returns.

DIF (DISCRIMINATE FUNCTION FORMULA)

In general, we allocate our field personnel according to where the incidence of and the potential for noncompliance with the tax laws is greatest. Our Examination Division uses a computerized scoring system to rate all filed returns. This process, using a discriminate function formula, commonly called DIF, gives each return a score. The higher the score, the more likely a return contains an error. By aggregating these scores by district, we are able to determine the number of higher DIF scored returns in each district and the necessary resources, including revenue agents, that should be assigned to the district.

I would like to note that since the DIF scoring system was implemented, the proportion of examinations resulting in no change has dropped from over 45 percent to around 25 percent. With this improved system of selecting returns for examinations, we are able to operate much more efficiently while significantly reducing the number of no change taxpayers, who might otherwise feel harassed by the IRS.

AUDITING LITTLE TAXPAYERS

I would also like to dispel a mistaken notion that the IRS spends an inordinate amount of its resources in auditing so-called little taxpayers. Our audit plans for the upcoming fiscal year call for only about 50 percent of our examination staff to be assigned to individual income tax returns, despite the fact that individual returns make up about 75 percent of total filings. Further, of the 50 percent assigned to individual return audits, more than one-third will be working on taxpayers with earnings or receipts in excess of $50,000, which as a group comprise only about 4 percent of the individual returns filed. This leaves about 65 percent of our individual income tax examiners to cover all the balance of individual taxpayers' returns. This is about 96 percent of individual taxpayers' returns.

IRS ENFORCEMENT ACTIVITY

IRS enforcement activity throughout the country has been shaped recognizing that noncompliance left unchecked can erode the positive voluntary compliance attitudes of the majority of taxpayers. Attitudes will remain positive only as long as taxpayers perceive IRS to be a fair and equitable administrator of what is admittedly a very complex system of taxation. It is equally important that the procedures and policies we use in dealing with instances of noncompliance are fairly and clearly drawn. And perhaps, more importantly, are fairly and consistently administered at all levels of the IRS organization. It is for this reason particularly that I wanted to testify personally at this hearing. As a new Commissioner, I want to assure the citizens of Alaska of my strong commitment to these principles. Hearings such as this can also help to insure that the IRS policies and procedures can be constructively evaluated by the Congress and the public.

Let me assure you that while I am Commissioner, any shortcomings identified will be dealt with expeditiously. This has also been true in the past. One example which occurred some time ago, but still receives wide publicity, involved seizure of an Alaskan taxpayer's automobile. While the Service acted within the letter of the law, it is clear that our actions reflected a poor judgment call considering all the circumstances. However, as a direct result of that incident, several procedural changes have been instituted. Strict rules stress that Service employees are not to use force, except to stop an attack upon their person or to preserve the safety of third parties. These rules also require revenue officers to choose the time and place and location of seizures to limit potential conflict.

CRITICISM OF SERVICE ENFORCEMENT ACTIVITIES

In the past, many of our enforcement activities have been criticized, and we have received much national publicity due, at least in part, to our effort to deal with individuals who adopt illegal means to avoid payment of taxes. The efforts of the Service to assess and collect taxes from these individuals have not been easy. Attempts of Service personnel to obtain information to allow these cases to be closed are often resisted by tax protestors through delaying tactics such as frequent cancellation and rescheduling of interview appointments, failure to keep scheduled appointments, unreasonably demanding that all communications be made in writing, and withholding of records that were specifically identified and requested by the examiners, thus necessitating the issuance and court enforcement of summonses to obtain any taxpayer and third party records.

HARASSMENT OF SERVICE EMPLOYEES

Our nationwide experience is that resistance can also take the form of harassment and threats against Service employees. For example, employees have been harassed by telephone, receiving abusive or obscene calls at home at all hours. The mails have similarly been used for harassment. Unwanted merchandise has been ordered for delivery and billing to our employees at home. Pornographic materials have been ordered as well as every conceivable form of merchandise, including subscriptions to magazines, record and book clubs, et cetera. Harassment has even carried over to employers, who are trying to carry out our new W-4 regulations. In one recent case, an employer representative passing out notices explaining the W-4 requirements was told he might disappear if he continued.

We have been told by some that our efforts have been insufficient, that we should be more aggressive. Others have charged that our efforts amount to harassment and are violations of individual rights. Responding to these contradictory and conflicting charges is made more difficult by the prohibition of section 6103 on providing information about our dealings with taxpayers. When we are charged with harassment, as in the recent article in Parade magazine, we are prevented from responding, even though as in the case of the individual on the cover of that issue, there is subsequent criminal indictment for tax violations. I suspect that tax protestor complaints of the IRS harassment will continue, but given the nature of their potential threat to our voluntary assessment system of taxation, I feel that IRS must continue to fairly but firmly apply appropriate sanctions to deal with these groups.

While it is probably too much to ask that the citizens of Alaska enjoy paying their taxes, I am hopeful through the give and take of these discussions that they will at least recognize our efforts to fairly undertake the extremely difficult job we are charged with doing. We sure do not want confrontation with taxpayers. We would like to carry out our responsibilities in as professional and orderly a way as possible. But I hope people will also recognize that in any organization with such a difficult mission, mistakes are made. We regret them, but from time to time they do happen.

We sincerely invite comments and suggestions on any problems which can be identified. Each matter will be thoroughly reviewed and an appropriate administrative or corrective action taken. This completes my prepared statement. With your approval, Mr. Chairman, we will be pleased to return later during these hearings to respond to any questions you may have.

Senator ABDNOR. Well, thank you, Mr. Coates. We will have you return later in the day. We appreciate that message from Commissioner Egger, and we are appreciative of the fact that he did attend our hearings over at Anchorage. I think it was good for him and all of us here to have him present. And we appreciate your comments.

I might say, we have a rather long list of witnesses that want to testify today, and so we may have to move everyone right along, even quicker than we'd like to, but to try to work everyone in, why, we will kind of have to hold to a time schedule.

And I appreciate what you said, Mr. Coates, about harassment, because as you gentlemen assured the witnesses over in Anchorage, the same holds true here today. We want you to know that there's to be no harassment at all from your testimony. We hope you feel free to speak out on whatever you care to talk about today. And you can also be assured from Senators Stevens and Murkowski and myself that there will be no harassment because of your testimony. We're here to listen, and we're just happy we have this opportunity.

NONDEPARTMENTAL WITNESSES

STATEMENT OF JOAN BECKDAHL

AUDIT HARASSMENT

Senator ADBNOR. The first witness this morning is Joan Beckdahl. Joan, if you'd care to come forward and take the—we won't call it the stand, I guess—the chair here. Thank you.

Mrs. BECKDAHL. I feel we have been harassed by the IRS over amounts for 2 different years of audits, amounting to a total of $151, which we have paid, but we're still getting letters. And we've had contact with the IRS at least 40 times, and I'd have to do a lot more thinking to decide how many. That includes phone calls, letters, and so forth.

The first audit was closed fairly quickly, and we ended up paying $86 for a casualty loss, which was—it could have gone either way; our favor or theirs, but we decided to pay the money, close the audit, and then as a result of the audit, I decided to learn more about income tax, so I could figure my own taxes, and I took some classes, and I sat down and refigured the papers that had been from the audit. And I found out that the last step of the return, the auditor forgot to deduct the child care credit, which I had never figured an income tax return before, and I realized this was a mistake. She apologized for doing it. And I did get the money back. But this was a matter between November 21, 1978 until June 25 before it was finally closed, and I got my money back. And between those times, there were lots of phone calls. They called me at work up to four and five times a day, which I thought was totally unnecessary. And the part that really got me at the last, when I found the mistake and asked them to correct this and give me the child care credit, which I had coming, they had sent the original return back to Ogden, and so they asked me to mail in my only copy of the income tax that I had. So instead of mailing it, of course, I took it in, and we finally got that back. Well, that was the easy year.

UNION DUES

We were audited for 1978 taxes also, and this was a matter of my husband's union dues, which I don't know if everybody is aware or not, but IRS is questioning the Teamsters because of the way they spend some of the union dues; the recreation; and so on and so forth. And I can see the IRS's position on that, but in 1978 rule book, it clearly states that union dues are deductible, and it does not say that they're going to question why they're spent. So, anyway, starting in February of 1980, we got the audit. We went in for the audit on March 12, and we were told to do nothing because of the court case that was pending. They called it suspense 1254.

So, we went home thinking we didn't have anything to worry about, but the letters and phone calls have continued since then.

Anyway, then March 31 we got reports of two different ways they have figured this; one allowing 40 cents per hour union dues, and one allowing 25 cents. So, I called back and was told that we still didn't need to do anything, because the court case wasn't settled, and that if my husband had only paid 35 cents on the hour or less, there would be no questions asked; no reason for an audit. Up to this time, I was not able to get specific information from the Teamsters as to how much he had paid. I don't know why I couldn't get the information, and IRS couldn't either. So, when they came up with figures and amounts due, I called the Teamsters, and I told them, I says, "We must have figures of how much," and that's when I was told that he only paid 30 cents on the hour. So, I think, "Oh, this is going to be easy now." I called them back and tell them, "He only paid 30 cents, and we'll close it." I also asked how they arrived at the figures allowing the 40 cents and the 25 cents if they didn't know how many hours my husband worked. And they says, "Well, we assumed that he paid 65 cents on the hour, and so we took proportions of that to arrive at the 25 and the 40."

So, we didn't hear from them any more until April 28. And we received more copies of the same, this time giving us a deadline of 10 days to pay up, which, of course, we didn't do, because we didn't feel we were in the wrong on any of it, and especially since the court case was not settled either. So, then, on May 6, I called the auditor again, and was told again to do nothing until the court case was settled. So, then, meanwhile I get the information written from the Teamsters how much we paid, and the auditor was very nice at this point, apologized for having even questioned it, because it shouldn't be questioned. And, so, I asked her, I says, "Well, could I sign the paper necessary to close this case?" And she said there's nothing to sign. So, I took her word and went home.

RECEIPT OF CERTIFIED LETTER

Didn't hear any more until December of 1980. I thought the whole thing was closed. We got a certified letter, notice of deficiency, giving us 90 days to file petition with the Tax Court. And this time, they only had the one report allowing the 25 cents on the hour, but it was still based on the assumption that my husband paid the 65 cents. So I wrote in January to get the instructions and forms necessary to take it to Tax Court, and I consulted with a lawyer, and she filed a petition with the Tax Court. The petition was granted. And, then, in April we got a letter from Vogel in Anchorage, I guess, the appeals officer, wanting to settle it without a trial. Well, I didn't feel there was any reason to still be getting correspondence, because we were told it was settled.

And then the next correspondence was May 6, when we got a letter stating the court's decision of the case that was supposedly settled between the Teamsters and IRS, but I had information that it was not settled, that they had appealed again, so they still had no grounds for wanting our money. And I didn't call them this time, because we were going to Anchorage. I didn't see putting out any more money for it, so I didn't do anything at this point. And, then later we got a letter from the Tax Court saying that we would have to go to Anchorage instead of Fairbanks for the case. And, then, didn't hear anything more for a little while longer, and then they started calling us at home. We got two or three phone calls at 7:30 in the morning. I cannot remember for sure which. And I told them this time that these papers were based on the assumption, once again, and so they said they would do something about it. They did. They recomputed another paper allowing 25 cents for every hour my husband worked, but I don't know how they computed it. Their figure turned up that he worked 2,018 hours, and I had the paper, which they had also, saying he worked 2,270 hours. So the figures were still wrong. And this time, instead of the $110, they wanted only $65. So, we consulted with another attorney, and he said for $65 and all you've been through, it's not worth the hassle, and your time going to Anchorage; the money you're going to spend; and he advised that we'd probably be better off to pay the $65, which we did, just to get them off our backs, but we did not sign the report saying we agreed with it, because we didn't. We were just tired of the harassment.

So, we thought it was closed once again until July 27, we got another letter saying that since we had not reached a mutual agreement, that it was being referred to the district counsel for trial preparation. And that's up to now.

So, I feel that for almost 3 years, and amounts totaling $151, which we have paid, they have spent numerous dollars and hours to get this money from us. I have spent numerous dollars and hours going along with what they demanded and asked, but it's still not settled.

TOTAL DOLLAR REQUEST BY IRS

Senator ABDNOR. Thank you, Mrs. Beckdahl. Just for the record, how much was the IRS asking for for all this?

Mrs. BECKDAHL. For the first audit, they wanted $86, which we paid; and the next one, we finally got it down to $65. So, $151 for 2 years' work—2 years' returns, and almost 3 years of correspondence.

Senator ABDNOR. If you could just start all over again, you'd just pay to have it all out of the way. No, there's been a lot of harassment, a lot of time consumption on your part here trying to answer and defend what you thought was your right.

Is there a pattern for this among other people?

Mrs. BECKDAHL. Other people I've talked to say yes.

Senator ABDNOR. Are they finding this same problem with this 25 cents an hour, or 40 cents an hour deduction.

Mrs. BECKDAHL. Yes. There have been others.

Senator ABDNOR. That has never been cleared up?

Mrs. BECKDAHL. To my knowledge, it hasn't.

Senator ABDNOR. Senator Stevens?

CHILD CARE DEDUCTION

Senator STEVENS. On the first occasion you were audited, and that was the time when you found out that there was a deduction that you had not taken in child care, is that right?

Mrs. Beckdahl. We had taken it on the original return.

Senator Stevens. Oh, you had. And it was disallowed?

Mrs. Beckdahl. No, there was no mention of it, but they forgot the last step of the return, which I was not too impressed with their auditor, to begin with.

Senator Stevens. Just an error on the first one.

Mrs. Beckdahl. Yes.

Senator Stevens. And the second one, primarily, was about the amount of union dues that were deductible.

Mrs. Beckdahl. Yes.

Senator Stevens. Did you ever get any pamphlet or anything from the IRS explaining union dues and what could be deducted and what couldn't?

Mrs. Beckdahl. Yes, but it was not at all clear. We do have some papers on it, but they ended it all up with, wait, because the court case is not settled. But we did get some information, which is more or less for their auditor's use, as far as how to figure.

Senator Stevens. Thank you very much.

Mrs. Beckdahl. Thank you.

Senator Abdnor. Senator Murkowski?

Senator Murkowski. Mrs. Beckdahl, I have just a brief question. You indicated that you did retain an attorney. Did you retain an accountant to assist you in the preparation of either of those?

Mrs. Beckdahl. No. We consulted once with a Teamsters' lawyer, and I don't know why, but she decided finally that it was not worth her time, because we were dealing with such a small amount of money. And, so, we decided to handle it on our own. The next time when we consulted with a lawyer, he told us that he felt we were right according to the figures that we had, and so on, but it just wasn't worth our time.

Senator Murkowski. You indicated that the current status is that they're preparing it for submission to the court?

Mrs. Beckdahl. That's what they want, yes.

Senator Murkowski. And you've not met with them or had contacts so the next step, I assume, is that you will be hearing from them further.

Mrs. Beckdahl. I suppose.

Senator Murkowski. Thank you. I have no further questions.

TAXPAYER ASSISTANCE

Senator Abdnor. Mrs. Beckdahl, we do appropriate considerable money for taxpayers assistance. Did you request any assistance, or did they turn you down in assistance in preparing your tax returns?

Mrs. Beckdahl. I didn't request any assistance, other than the two lawyers we talked to.

Senator Abdnor. Thank you very much. We appreciate your testimony, and your statement that you handed to me will be made part of the record, too.

(Reference material of Joan and Daniel Beckdahl follows:)

STATEMENT OF JOAN D. AND DANIEL F. BECKDAHL

1977

Nov 21, 1978 - Notice of Audit
X casualty loss
✓ moving exp.
✓ rental income
✓ tool deduction
Nov. 30, 1978 - Audit - 3 hrs.
Kathleen F. Haugh, Auditor
Confused
not capable
ran to supervisor
argumentive
Nov. 30, 1978 - Called after got to work
requested another auditor -
Clair Merica took over
Numerous
phone calls
at work
Dec. 1, 1978 - closed audit -
disallowed casualty loss ($302)
(7 M.V. did not exceed reimbursement)
Pd. $252 + 9.48 Int.
March, 1979 - I realized they didn't give
Child Care credit - $166
March 13, 1979 - Went in - they were
sorry - they "forgot"
March 19, 1979 - Note asking us to mail in
our copy of return so they
could make copy
March 22, 1979 - I took return in instead
incidental → (Interagency car hit mine)
June 25, 1979 - Finally got $$ back
$172.06 (c̄ int.)

1978

Feb. 14, 1980 - Notice of Audit
✓ child care
✓ rental income
X union dues

March 12, 1980 - Audit (Dan + I both went)
Loretta Loftus, Auditor
1254 Suspense - told to
do nothing - wait for
court case (Carl + Ruth Briggs)

March $\overset{28}{31}$, 1980 - Received 2 reports - 1 allowing
40¢ per hr. union dues $\$110^{00}$ due - other
allowing 35¢ per hr. $\$45.00$ due

I phoned - Loretta told me IRS would
accept 35¢ per hr. or less
no questions asked - I asked
how she arrived at figures
for reports - She said since
Teamsters would not give
her any information she
assumed Dan paid 65¢
per hr. + disallowed portions
accordingly to arrive at
amounts due of $\$110^{00}$ or $\$45^{00}$

April 28, 1980 - Received from IRS more
copies of same reports giving
us 10 days to settle + pay.

May 6, 1980 - I called Loretta +
was told to do nothing
unless we heard from
her since it was still
in suspense

May 20, 1980 - I called Teamsters and
was told Dan only paid
30¢ per hr. in first place

May 22, 1980 - Statement from Teamsters
giving amounts pd. + # hrs.
worked

May 29, 1980 - I took copy of Statement
from Teamsters to IRS -
Loretta apologized - "sorry
to bother you - if we'd only
known you only paid 30¢...."
I was told ~~ther~~[illegible]
the case was closed. I
asked to sign the paper
+ she said it wasn't
necessary.

Dec. 23, 1980 - Certified letter - Notice
of Deficiency - 90 days to
file petition with tax court
Only one report this time
allowing 25¢ per hr. - (wanting
$110.00) Still based on assumption
that Dan paid 65¢ per hr

Jan. 15, 1981 - I wrote to Tax Court
for forms + instructions -
received them right away

Jan. 29, 1981 - Consulted lawyer - Debra Mallon

March 17, 1981 - Petition filed with tax
court by atty.

March 23, 1981 - Petition granted by tax
court

April 23, 1981 - Letter from IRS - I. Vogel,
Appeals Officer - wanting
to settle without trial

May. 6, 1981 - Letter saying Court's
decision (Suspense 1254, I guess)
regarding dues issue was
to disallow all but 25¢
Wanted 110^{00} still.

May 21, 1981 - letter from U. S. tax
court saying case would
have to be heard in
Anchorage instead of Fairbanks

2a 3 7^{30} A.M. - I told them it was all
phone called from a mistake and that the
IRS in 1 week figures were reached
on an assumption - they
said they would check
it out

June 4, 1981 - Letter (J. Vogel) report re-computed allowing 25¢ per hr. for 2,018 hrs. (their figure) Dan actually worked 2,270 hours. This time they only wanted $\$65^{00}$

June 8, 1981 - Consulted with Frank Fleeks, Atty - he said it wasn't worth our time, money, & trouble for $\$65^{00}$

June 22, 1981 - We paid $\$65^{00}$ to get them "off our backs" - but did not sign that we agree with report

July 27, 1981 - letter - J Vogel - case referred to District Counsel for trial preparation.

STATEMENT OF DUANE MATHIS

DISPUTE OVER DONATIONS

Senator Abdnor. Our next witness is Duane Mathis. Is Mr. Mathis here?

Mr. Mathis. My name is Duane Mathis, and I'm 43 years old, and I've lived in Fairbanks since 1944. I'm married, and I have five children still living at home. I'm at dispute with the IRS over my 1977 returns. Some of the items that we're in dispute over is my church donation, Boy Scouts of America donation. I'm an aircraft mechanic. I purchase tools for breakage, lossage, and tools being worn out. The amount that I'm speaking of involves $2,338.62, including interest as of this date.

My wife and I, we've lost our records due to getting water inside of our basement. And we've been in the process of getting written statements from friends, and so on like that, that know what we've done and gone through in the past, so that they know us and know what we've done.

Downstairs room 160 in the Federal building here, where we've been going to, is only open Monday through Wednesdays. And my job is in Anchorage. I commute on my days off, which are Wednesday and Thursday. I've been working in Anchorage since January of 1977. When we've gone down there, I've been told by the receptionist that these people keep odd hours, and either they've been out of the office, or doing field work. I've never been able to personally see these people myself.

OK. I have a levy against me. My paycheck of July 8, 1981, was taken totally by IRS; it amounted to a net paycheck of $1,248.39. My second paycheck that was taken was $966.39, and out of that I received $280 from my company for myself and family.

I'd like to say that my 1980 Federal return is held up, and also is my State, and my other banking assets are frozen. I cannot touch them.

I plan soon to have all of this paperwork completed here, and I intend on continuing on with what I'm going on right now, to get this matter cleared up. My wife has also told me that she's received a phone call from the IRS in Anchorage, I believe, and they're questioning our 1980 Federal return. And the biggest thing that I've got to do is I've got to find out who to take this paperwork to to clear up this matter, and also about how long it would be before this paperwork is sufficient to meet their needs also, how long it would be before I could receive my money back.

Senator Abdnor. Well, thank you, Mr. Mathis. You've attempted to make contact with the IRS, but have been unable to talk to anyone about the problem, is that what we're saying here?

TAXPAYERS ASSISTANCE OFFICE HOURS

Mr. Mathis. Yes, I've gone to the Taxpayers Assistance Office, which is downstairs here, room 160, and on the door it's placarded Monday through Wednesdays only; on Thursday and Friday they're closed. I'm only in town on Wednesday, and a lot of times I don't get here every week; sometimes I can't make it. So, the times that I've gone down there to see them, nobody's been there in that department, according to the receptionist to help me.

Senator ABDNOR. And you said you went to the IRS Office in Anchorage, too, did you?

Mr. MATHIS. No.

Senator ABDNOR. Oh.

Mr. MATHIS. No, I said we received a phone call from the IRS Office in Anchorage. My wife has a home here. Just recently on letting us know that there's a conflict with our 1980 1040 form.

Senator ABDNOR. You don't know why; what the problem is, though?

Mr. MATHIS. I think it was due to some—well, I don't really care to answer that. I don't really know for sure.

Senator ABDNOR. All right. But there's no central theme running around what your problem was in previous years, and what your problem is today. I mean, is it the same question and the subject that's questioned here, or——

Mr. MATHIS. No.

Senator ABDNOR [continuing]. Is it—just tell me that. Or, is it different each time?

Mr. MATHIS. Well, I really don't know, because I haven't had sufficient time to discuss it with my wife, but we were going to work also with that to clear that problem up.

Senator STEVENS. It was a 1977 return that led to this attachment of your assets, right?

Mr. MATHIS. Yes, it was.

Senator STEVENS. And when did you have that problem with the water in your basement?

Mr. MATHIS. I believe it was in 1978—1978 or early 1979.

Senator STEVENS. You were trying to get statements from your friends that were designed to meet the problems that you had with IRS during the audit, is that right?

Mr. MATHIS. Yes, to back up statements, like, say, tools that I had purchased, that they knew that I had purchased during that respective year, and things like that.

Senator STEVENS. How much was involved, the total liability on the 1977 return that they wanted you to pay?

Mr. MATHIS. OK. It would be $2,148.86. And they have statutory additions of $189.76 for a total of $2,338.62.

PAY ATTACHMENT

Senator STEVENS. Now, did they tell you anything about your right to ask for sort of partial payments of that instead of having your paycheck attached?

Mr. MATHIS. I had no knowledge of any of this going on until my paycheck was attached.

Senator STEVENS. You didn't get any notices that they were going to pursue collection procedures?

Mr. MATHIS. I, myself, never received any collection notice at all, and I do not know for sure whether my wife did or not.

Senator STEVENS. And you've got five children, do you?

Mr. MATHIS. Yes, at home; living at home right now. We have a total of nine children.

Senator STEVENS. Who do you work for?

Mr. **Mathis**. I work for Wien Air Alaska. They moved their maintenance facility in January of 1977 to Anchorage, so my job now is there.

Senator **Stevens**. Even after taking approximately $2,000 from your paychecks, your savings account's still frozen?

Mr. **Mathis**. To my knowledge today, yes.

Senator **Stevens**. Have you gone to IRS and tried to work out with them some payment schedules?

Mr. **Mathis**. No, I haven't because I haven't had success with this office down here. I had contacted Congressman Young's office here, Senator, and also in Anchorage.

Senator **Stevens**. Thank you very much.

FAIRBANKS TAX OFFICE AVAILABILITY

Senator **Murkowski**. Is there another tax office here in Fairbanks, or is there just one in room 160?

Mr. **Mathis**. They may have other offices, but that's the one I was supposed to go to.

Senator **Murkowski**. I guess my question, Mr. Chairman, is maybe room 160 is open on Monday and Wednesday, but I wonder if they have another one nearby that's open every day; I don't know.

Mr. **Mathis**. If it is, I'm not aware of it. That's the room that I was referred to.

TAX PREPARATION

Senator **Murkowski**. And do you have any professional assistance in the preparation of your tax return, or have you done it yourself?

Mr. **Mathis**. My wife does it. She uses a tax guide book, and so on like that.

Senator **Murkowski**. Are you currently receiving your salary from Wein?

Mr. **Mathis**. No, my check goes to IRS, and they only gave me one check for $280.

Senator **Murkowski**. And this started in July, and Wien pays every 2 weeks?

Mr. **Mathis**. Every 2 weeks, I get paid, yes.

Senator **Murkowski**. So, you haven't had a full paycheck, then, since when?

Mr. **Mathis**. That would be the end of May.

Senator **Murkowski**. And when do you contemplate receiving a full paycheck? You haven't talked to legal counsel?

Mr. **Mathis**. No, I haven't. Adding it up, I still would have money taken out of my next paycheck, which is next Wednesday.

Senator **Murkowski**. Thank you.

Senator **Stevens**. Let me make sure I understand this, you believe when you can get the information and file it, you'll have a refund coming actually, right?

Mr. **Mathis**. Well, that's what I feel. I don't know whether these statements and letters and stuff will——

Senator **Murkowski**. Can you give us just a rough idea of the total amount that's in dispute over the years. You have the 1977, amount and then you indicated, I believe, 1978 and 1980? I don't know what the 1979 situation is. Do you have a feel for how much money IRS has indicated that you owe them?

Mr. MATHIS. It's in the neighborhood of $600 for 1980, and including the interest, it's $2,338.62.

Senator MURKOWSKI. Total.

Mr. MATHIS. For the year 1977.

Senator MURKOWSKI. So it's 1977 and 1980——

Mr. MATHIS. Yes.

Senator MURKOWSKI [continuing]. In question? You have no problem with 1978 and 1979?

Mr. MATHIS. As of this moment, no.

Senator MURKOWSKI. So, somewhere around $3,000?

Mr. MATHIS. Yes.

Senator MURKOWSKI. Thank you.

Senator ABDNOR. How long has this withholding been going on? Last May?

Mr. MATHIS. Since, I would say about 1½ years, approximately. I'd have to take a look at the paperwork that I don't have here to say for sure.

Senator ABDNOR. So this must——

Senator MURKOWSKI. Excuse me, Mr. Chairman.

Senator ABDNOR. Go ahead.

Senator MURKOWSKI. Does your wife work?

Mr. MATHIS. No, she doesn't work.

Senator MURKOWSKI. She takes care of the children?

Mr. MATHIS. Yes.

Senator MURKOWSKI. So I assume this has created a hardship on your family?

Mr. MATHIS. Yes, it has.

Senator ABDNOR. Well, thank you, Mr. Mathis. Your testimony has been most helpful, and we appreciate you being here today.

LETTER FROM DUANE MATHIS

Duane Mathis 43 yrs. lived in Fairbanks since 1944. I am married and have 5 children living at home Yet. I am in dispute with I.R.S. and my 1977 returns. My wife and I lost our records when our basement got water inside. We have been trying to get letters from people to back up our claims. We now are close to getting enough statements needed. My pay check 7-8-81 1248:39 totally taken my pay check 7-22-81 966:39 Taken $280.00 left for us we are at odds. Involving 2,338.62 including interest. Tax office Room 160 only open Mon-Wed. (Fairbanks)

I work in Anchorage with Wed/Thurs off and try to get to Fairbanks as often as possible to see my family. My 1980 Federal and State returns are being held until this matter with I.R.S. is resolved. My other banking units are frozen. We are at dispute with I.R.S. and our 1980 returns via phone call from Anchorage which we also are trying to clear up.

I have been several times to Room 160 Federal Building Fairbanks and have been told by receptionists that the people I need to see keep "odd hours" and/or "out in the field." So I have not been able to see them.

DUANE A. MATHIS.

STATEMENT OF NORMAN S. MacPHEE

Senator ABDNOR. Don Porter. Is Mr. Porter here?

Norm MacPhee?

Mr. MacPhee, welcome to the committee. If you have a written statement, we'll put the entire statement in the record. Thank you.

SMALL BUSINESS PAYMENTS OF IRS BILLS

Mr. **MacPhee**. My name is Norman S. MacPhee, and I'm a certified public accountant. And I was in public practice up until December 31, 1980. And I would like to welcome you to Alaska, first. Thank you very much for the opportunity. I've got a copy of your most recent tax bill, and it's a change in the right direction.

I would like to just talk for a moment on what is occurring as it relates to employers in Alaska. Most of my work in my practice dealt with the way IRS would handle small employers. And under the current rules, and it's in the written testimony, under the current rules, most employers in Alaska are required to pay their bills to the IRS within 3 days, 3 banking days. Now, relative to the way normal business is conducted, that provision is onerous. And in the case of a business in the bush, it's impossible to meet. You are required to get the cash that's withheld from employee paychecks for Federal Income tax, for social security to a Federal depository within 3 banking days. The postal service is not good enough to get that accomplished in Alaska, and once you have failed once, every time you fail, it begins to create an endless stream of notices out of Ogden. Once the stream of notices begin, to get them stopped requires endless correspondence.

And what I am suggesting is that Congress consider changing the provisions to allow employers to make their payment—deposit payments to the IRS within 15 days of the close of the month. Now, there is a provision that—currently in effect, and it's a regulation not in the code, that allows that if the deposit is $3,000—in the $3,000 area. But as soon as it gets large, and here in Alaska, even small employers have a very large deposit, as soon as it gets large, they—the requirement is 3 banking days.

Senator **Abdnor**. Is that the law or is that the regulations?

IRS REGULATIONS ON PAYMENT OF BILLS

Mr. **MacPhee**. It's in the regs. And the regulation is—well, the law is in subtitle F, section 6001, the regulation is 31.6302(C)(1)(a)(1). OK? You've got a lot of regulations.

Senator **Abdnor**. Yes.

Mr. **MacPhee**. In a normal business, payments are made under incentive conditions rather than penalty conditions. As a for instance, if I buy from a supplier, he will usually give me terms of 2/10 net 30. So I actually get a discount if I pay within 10 days. And I'm required to make payment within 30 days.

Now, under the provision I'm speaking of and the IRS, you have 3 days to make the payment, and you have an automatic 5 percent penalty; automatic; and interest starts to run if you don't make the 3 days. And the provision—especially when you're dealing with remote employers—is impossible OK.

I had one other thing, if there are no questions on that.

Senator **Murkowski**. I have—Mr. Chairman, excuse me.

Senator **Abdnor**. Go right ahead.

Senator **Murkowski**. Do you represent or previously have you represented firms in the bush that have actually confronted this problem of submitting the withholding in a 3-day period?

Mr. **MacPhee**. Yes, sir.

Senator **Murkowski**. And because there are no banking facilities, you have to depend on bush air service and air taxi operator that comes in after that, and as a consequence they're penalized?

Mr. **MacPhee**. As a consequence, they're penalized.

Senator **Murkowski**. And they come to you, I assume, and express their concern, and all you can do is say, "That's the way the system's set up."

Mr. **MacPhee**. No; once the situation's explained to the service on one issue, they will abate the penalty. Keep in mind now, the penalty starts coming automatically. The computer kicks it out. And you can write to the service in Ogden, explain the circumstances, and they will abate it. This occurs, however, again the next quarter. It happens every quarter, and it just goes on, and on, and on. And there's no switch for them to throw to make allowances for this kind of transportation problem. Fifteen days after the end of the month would seem—I would classify anybody who'd paid me within 15 days of the end of the month as a quick pay. Three banking days is just—it's an onerous provision.

Senator **Murkowski**. Mr. Chairman, I've known this witness for some time, and I feel that he's qualified to speak in an area that he's addressing our group. And having personally had the experience, too, of dealing with people in the bush and the considerable time delays associated with lack of conventional services, including banking service, accounting service, and professional services, it is very, very difficult to meet these requirements.

Senator **Abdnor**. I would just like to say that we certainly appreciate Mr. MacPhee bringing this to our attention. This is something that sitting down in Washington, is the last thing we'd probably think about. So, it is good that we do come up here and hear this situation. It's ridiculous when you hear it, but it does go on.

Thank you.

HIGH TAX RATES IN ALASKA

Mr. **MacPhee**. I have one other item, if I may? And that is just to share with you what has been coming to my attention since I've been practicing in Alaska as an accountant, is we in this State are among the highest paid people in the United States, because of our cost of living up here. We, therefore, fall under the progressive tax system, we fall in some of the highest tax brackets there are. I'm very concerned about the increasing awareness of the taxpayer, that—the feeling that the tax system is not fair. There is a common belief that people on the low end of the income scale pay no taxes, and that people on the high end of the income scale pay no taxes. And I see that to be true in my practice. People on the high end of the scale can hire people like myself to get into what are commonly known as tax shelters or deferral investments, which are legitimate. People on the low end of the scale are ignored under the tax system, exempted, and the people in the middle are carrying the burden. The feeling is getting widespread. And I think that one of the reasons that you're seeing Alaska as having a high rate of IRS problems is because we're paying a high rate of tax, and it should be kind of a warning of what may be to come in the rest of the country. And I think it's really good information what's occurring here, because as people progress up into the high tax rates, they're going to enjoy paying taxes less and less. And it's just a feeling I have with almost all the people I represent.

In defense of the Service for a moment, once someone hires us, their problems with the Service go away. The Service is very professional to deal with for CPA's but I think they treat us a little differently than they do a taxpayer trying to defend himself. But they have treated us very professionally here in Fairbanks. But it may be unfortunate that one has to go pay a hired gun to take that work on. And that's all I have.

Senator **Abdnor**. Well, it's certainly an excellent point. I guess we've heard this during this last few months with the tax bill we had up for consideration. Senator Stevens?

Senator **Stevens**. No questions. I thank you very much. They're valid suggestions.

Mr. **MacPhee**. Thank You.

Senator **Abdnor**. Thank you very, very much for coming. We'll make this part of the record.

Mr. **MacPhee**. And that latest bill was a good bill.

Senator **Abdnor**. Oh, we're happy to hear you say that.

Senator **Stevens**. Some of the problems you remarked about, we've tried to solve those, like indexing, for instance.

Mr. **MacPhee**. That's right. That's——

Senator **Stevens**. That's a step in the right direction.

Mr. **MacPhee** [continuing]. The first step in the right direction.

PREPARED STATEMENT

Senator **Abdnor**. Thank you.

Your prepared statement will be inserted in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF NORMAN S. MACPHEE

Subject A. Employer Deposit Requirements For

1) Federal with-holding
2) FICA with-holding

Law is in Subtitle F (Sec 6001 ET. Seq.)

Penalties for failure to meet:

1) 5% - Late (+ interest)
2) 100% - willful evasion or non-payment (+ interest)

Rules now: (a) If deposit is less than $500 for calendar quarter, mail with 941 within 30 days of close of quarter.

(b) If deposit is between $500 - $3,000 at close of calendar month, employer is required to deposit within 15 days of the close of the calendar month.

(c) If deposit is $3,000 or more at the end of any "eigth monthly period" (defined as 3rd, 7th, 11th, 15th, 19th, 22nd, and 25th of each month) the employer must deposit within 3 banking days.

Reg: 31.6302 (c) - 1 (a) (1)

NOTE: "Deposit" means, if the IRS has sent "cards" to the employer, employer may make deposits at designated banks. If no "cards" are available, employer must make deposit with the IRS.

Problem

The "(c)" requirement above (requiring deposits within 3 days) is onerous and impossible for many employers to meet. It also applies to small employers, since our company has 6 employees and fall under this regulation.

Take the case of an employer in "the bush" in Alaska where no banks are available- assume, for a moment, that the employer even has a book-keeper with the knowledge of calculating wage-with-holding properly. How can they get a deposit to the IRS within 3 days? - There are no banks out there.

Recommendation

I recommend that the "3-day" deposit requirement be deleted entirely and that the employer be given a minimum of 15 days after the close of each month to make payroll deposits. (As per (b) above). In the commercial world, if a monthly account is paid within 15 days of the close of the month, the payor is termed a "quick-pay"

Consider giving "discounts" for early payment rather than "penalties" for late payment.

Subject B. Comments on Current Tax Law

1) Principals of American Taxation on Income

   a) Tax amounts necessary to fund Federal government.
   b) Base tax on ability to pay
   c) Use taxation modifications to give incentives to the citizens to take desirable economic action.

2) Problems with the current system

   a) An increasing number of citizens on the low-income end of the scale pay no tax, although they are users of services.

   b) People (and business) on the high end of the scale pay little tax because they can hire "tax shelter" and deferral advisers.

   c) The law and associated regulations are sc complex that even professional tax practitioners do not understand them.

   d) An increasing amount of GNP is spent on preparation of returns and deferral or avoidance schemes.

   e) An increasing number of business decisions are being based upon tax implications- most leading to bad "business" decisions and forcing American Business to be non-competitive relative to the world.

   f) There is an incentive for the Federal Government to continue inflation because, as inflation pushes wages up, a taxpayer pays on even-higher percentage of tax based upon wages.

   g) An increasing number of citizens are protesting and cheating on their taxes because they believe the system to be unfair.

3) Proposed Alternative

   a) A "flat rate" tax system where all individuals pay the the same % of gross income as tax; no "exemptions" or "deductions" allowed.

      Note: The tax rate would not have to be very high to fund current expenditures.

   b) A "flat rate" tax system on business where all business pays the same % rate on gross income- probably not as high a rate as an individuals. Again- no exemptions or deductions. Much like a sales tax.

   c) As needed, to give incentives to citizens and business so that desirable economic action will occur, congress could issue temporary tax credits.

   This system:

   1) is simple - everyone could file their own returns.

   2) would be perceived as more fair.

   3) requires all to pay a share.

   4) eliminates the elaborate, wasteful tax deferral and avoidance system.

   5) meets all American taxation objectives.

   6) would substantially reduce collection, reporting and audit cost to the government.

STATEMENT OF WILLIAM MATHWIG

Senator **Abdnor**. William Mathwig? Mr. Mathwig, we welcome you to the committee.

Mr. **Mathwig**. I think he has my copies.

Senator **Abdnor**. You think what?

Mr. **Mathwig**. He has my copies.

Senator **Abdnor**. Just one second, and we'll—you may proceed, Mr. Mathwig. Thank you.

Mr. **Mathwig**. My problem, I guess, is a little bit different. I want to know why when IRS owes a taxpayer money, he can't get it?

LATE IRS PAYMENT TO TAXPAYER

Now, in 1979 I got a notice for a tax bill on July 23 for airplane tax for $25, which was supposed to have been July 1; the tax, I didn't know nothing about. So, they put a $6.75 penalty and a $1.09 interest on it, which was taken care of.

In June 1980, they was supposed to send me a notice for this tax in a form, which I did not receive. So, I went to the IRS office downstairs to get the form, and they didn't have any. So, I asked them what I was supposed to do; send the tax, or wait till they get the form. Well, you've got to send the tax, or they'll penalize you. Well, I called the Anchorage office, and they didn't have a form. They said they would have to get the form from the printing office out of California, which I did not receive until sometime in November. But, anyhow, I sent the tax the last of June. And, then, here on April 13, I get a notice that they owed me $18.74 because of overpayment, because the tax had been discontinued as of October 1. Well, I didn't get the refund, but then when my 1980 taxes was paid, the preparer, which was an honest mistake on her part, I am sure, because everything else is right, but she just looked on the—or down the wrong column, and made a $60 error. So, for that $60 error, they paid—or penalized me $44 and a $1.90—or a $1.49 in interest, a total of $105.92, which I sent them a check for. And I also wrote a letter along with it asking for my $18.74 plus interest and penalties at the same rate they charged me. And to date, I have not heard an answer yet. However, they cashed my check; they got my letter, cause I sent it certified mail.

Senator **Abdnor**. That's where you're at today, right?

Mr. **Mathwig**. I'm still waiting for my $18.74 plus penalties and interest.

Senator **Abdnor**. You hear from them when they think you owe money——

Mr. **Mathwig**. I have not heard a word from them.

Senator **Abdnor** [continuing]. They let you know. At that time, you do hear from them.

Mr. **Mathwig**. Pardon?

Senator **Abdnor**. When they feel you owe them, they are quick to let you know.

Mr. **Mathwig**. Oh, there's no doubt about it. Penalties and interest right off the bat; no chance for nothin'.

Senator **Abdnor**. Mr. Mathwig, this is the kind of thing that is very, very unfortunate. And we're sorry. We're pleased that you told us about it. We certainly have it for the record, and I'm sure it will be brought to the attention of the IRS maybe today. If you stick around this afternoon, we'll hear more about it from the tax people when they take the stand again.

Mr. MATHWIG. Just one more little point here——

Senator ABDNOR. Oh, all right.

Mr. MATHWIG [continuing]. That I think I might bring out at this time. Now, their letter was dated June 29. This $105 was supposed to be in their office by July 9. That isn't very much time, not considering the fact that here just last week I was 5 days getting a notice on a registered letter from Fairbanks to my post office box.

Senator ABDNOR. It was June/July——

Senator STEVENS. It gave you 10 days. You're certainly right there. I think IRS has got to get more realistic about the amount of time it takes for items to get through the mail with the vast volume of mail that we've got these days.

Mr. MATHWIG. That's right. If this letter had been held up 2 days, I'd have never made it.

LEGISLATION ON PAYMENT OF GOVERNMENT BILLS

Senator STEVENS. You may be interested in the fact that we've got a bill in that requires the Government to pay its bills on time, and for it to pay interest, if it doesn't on time. We haven't been very successful in getting that passed yet by the Congress. There's increasing sentiment in Congress that that should be done. And you've got a real point. I don't—we'll ask them. No use asking you questions about it. We'll ask them whey they sent out a notice like that, and saying that if they made an error in your refund, why didn't they send you the amount that was due to you at the same time.

Mr. MATHWIG. Right, that's what I couldn't understand.

Senator STEVENS. Computers only work for the house, I guess.

Mr. MATHWIG. They tried to make it appear like I had made the mistake. It was not my mistake, because the $25 I sent them was the tax on it the year before.

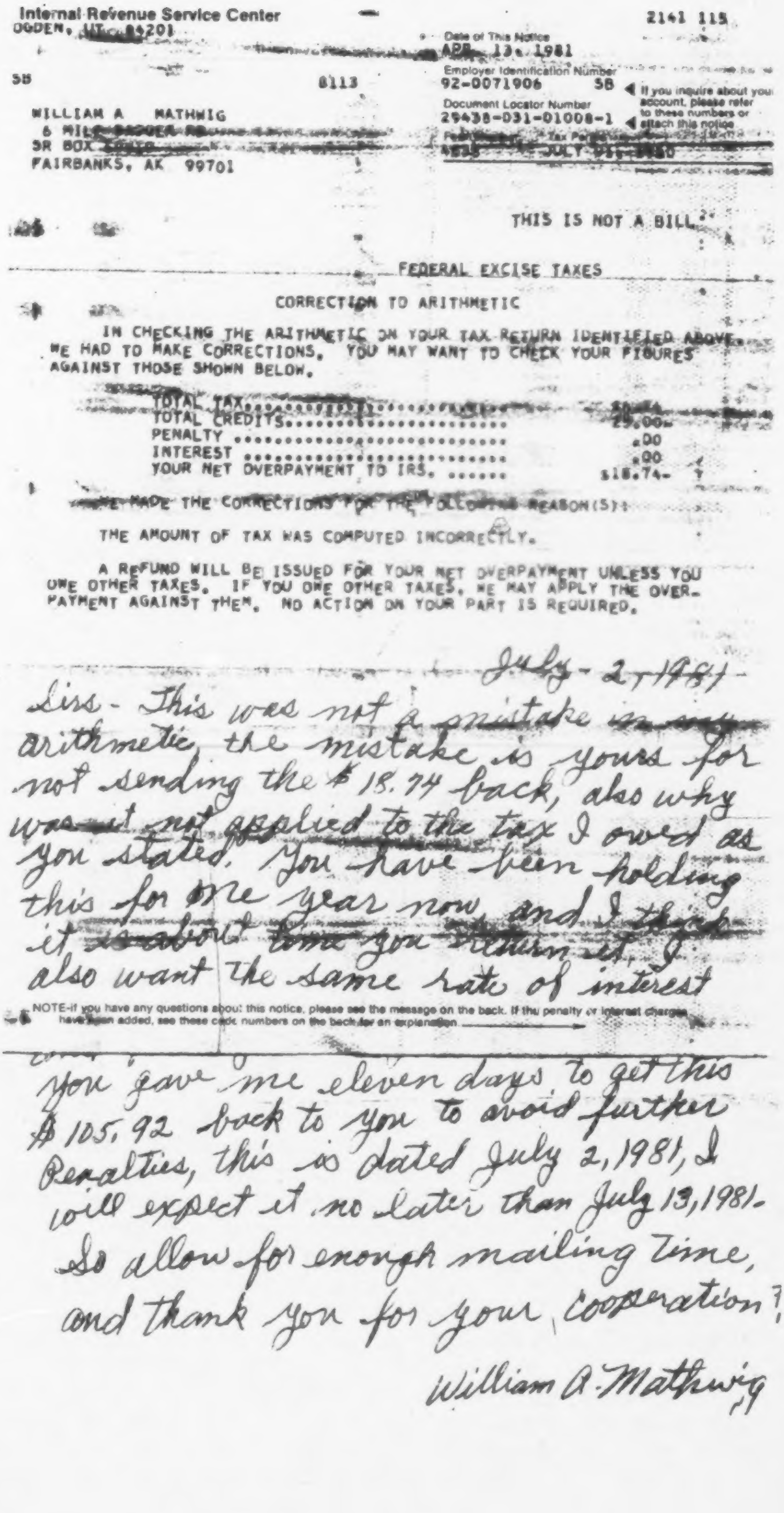
Senator STEVENS. Thank you very much. Frank, do you have any questions?

Senator MURKOWSKI. No, I would suggest that very possibly you might hear something today.

Mr. MATHWIG. Thank you.

Senator ABDNOR. Thank you, Mr. Mathwig.

(Reference material of William Mathwig follows:]



Internal Revenue Service Center
OGDEN, UT 84201

Date of This Notice
APR. 13, 1981

Employer Identification Number
92-0071906 SB

Document Locator Number
29438-031-01008-1

If you inquire about your account, please refer to these numbers or attach this notice

Form Number Tax Period
[redacted]

2141 115

SB 8113

WILLIAM A MATHWIG
6 MILE [redacted]
SR BOX [redacted]
FAIRBANKS, AK 99701

THIS IS NOT A BILL

FEDERAL EXCISE TAXES

CORRECTION TO ARITHMETIC

IN CHECKING THE ARITHMETIC ON YOUR TAX RETURN IDENTIFIED ABOVE, WE HAD TO MAKE CORRECTIONS. YOU MAY WANT TO CHECK YOUR FIGURES AGAINST THOSE SHOWN BELOW.

TOTAL TAX..............................	[illegible]
TOTAL CREDITS..........................	25.00-
PENALTY	.00
INTEREST	.00
YOUR NET OVERPAYMENT TO IRS.	$18.74-

WE MADE THE CORRECTIONS FOR THE FOLLOWING REASON(S):

THE AMOUNT OF TAX WAS COMPUTED INCORRECTLY.

A REFUND WILL BE ISSUED FOR YOUR NET OVERPAYMENT UNLESS YOU OWE OTHER TAXES. IF YOU OWE OTHER TAXES, WE MAY APPLY THE OVERPAYMENT AGAINST THEM. NO ACTION ON YOUR PART IS REQUIRED.

July - 2, 1981 -

Sirs - This was not a mistake in my arithmetic, the mistake is yours for not sending the $18.74 back, also why was it not applied to the tax I owed as you stated. You have been holding this for one year now, and I think it is about time you return it. I also want the same rate of interest [illegible] you gave me eleven days to get this $105.92 back to you to avoid further Penalties, this is dated July 2, 1981, I will expect it no later than July 13, 1981. So allow for enough mailing time, and thank you for your cooperation.

William A. Mathwig

NOTE-If you have any questions about this notice, please see the message on the back. If the penalty or interest charges have been added, see these code numbers on the back for an explanation ——————→

STATEMENT OF ELDER LEBERT

Senator ABDNOR. Mary Cannon? Is Ms. Cannon with us today? Has Don Porter arrived yet? Jim—James Lundgren? He was due at 11. Is Dean Farris in the—then Dr. James Lundquist, is he here? Let me ask this: do we have any people here who asked to testify? Yes. Would you care to come forward? Could we ask you to state your name and all for the record?

Mr. LEBERT. My name is Elder Lebert.

Senator ABDNOR. Oh, all right, Mr. Lebert.

LOST CLOTHING DEDUCTION

Mr. LEBERT. I want to add something to these horror stories that I've noticed in 2 years so far. I came to Alaska in 1939. The first job I got was $5.25 a day, and I had to pay $1.50 a day for board. In them days, I was proud to pay income tax. I was looking forward to the day when I was making enough. And then I got to making money, and then they slipped this withholding tax in on us, that was just supposed to last during the war. Well, that wasn't so bad; we let that go. 1947, I'm working for the Geological Survey up on the Slope, and I lost a duffle bag full of clothes, and there were only two witnesses there, the pilot and the geologist. The geologist is dead now, but the pilot still lives here. When I come to figure out my income tax, I deducted $150 for my lost clothes. I lost everything I had. In 1950, why, they come back and said I owe them $650, because they wouldn't allow that $150. And I offered to get affidavits from the geologist and the pilot that I'd lost—sustained that loss, but, no, they wouldn't listen to that. They harassed me for about a year. There was a joker around here giving me fits about that $650. They was going to attach everything. I didn't have anything, but, anyway, he was going to attach it.

Anyway, I finally got tired of them, and I told him if he ever bothered me any more I was going to kill him, and I showed him the shotgun I was going to do it with. So, they left me alone until here in 1976, they were going to audit me. Well, now, I'd gotten off of my back on that. I gave 'em $6,000 here a while back just to get 'em off my back, because they—I got—I married a widow in 1973, and she's got high pressure, and she's pretty near had strokes. She's afraid of the IRS and what they can do to you. And she's got some property, and she doesn't want it tied up, and I don't blame her.

But, anyway, they've got me for 1977–79. I was working at pump station 7 last—it was about 1 year ago, and I get a notice that they wanted me to give them an extension for my 1977 tax. And I wrote back and told them, I said, "Would you give me an extension if I needed one? I don't think so, so I ain't giving you one." So the next thing I know, they've got me for—they're checking my 1977–79. So, along September, why, I get to thinking, well, them guys are really getting serious, so I'm going—better quit. I'm going to have to devote all my time to their harassment tactics, so they don't bother my wife. So, I quit. And then I get a notice—one morning, why, I get a call from Mount. McKinley Mutual Savings Bank that the IRS has given them a summons that they want my records that I got there. So I tell them not to give it to them, that they've got to go through law, like everybody else. They said, well, no, they can't do that. They're going to have to do it. And I says I'd—on figuring up my income tax, I'd got their complete code. I'd paid $12 for two books to tell me the rules and regulations of the IRS, but it don't mean much to me. It's so contradictory, nobody—even the agents, themselves, can't figure it out.

But, anyway, I make—pass—or file a motion here in Federal court to quash administrative summons. And the judge signs that on November 27,—or 26. Anyway, I stop them from geting my records. But, then, November 26, the judge signs it, but then March 20—I never got any notice about it or anything—but I get a notice March 20, 1981, that the judge signed it on November 26, but it got lost in transit between here and Anchorage. So that sounds kind of fishy to me. And, then, a couple of days later, why, here I get a notice that the judge vacated that order. So, then I file a motion as an intervenor. Well, the judge allows me as an intervenor, but then he turns around and tells them to give them the records. So, there's nothing in there that I'm ashamed of or I'm trying to hide, so I—that's OK with me. But, then, I get a bill from the bank that I owe pretty near $1,000, because of the lawyer and costs to copy. And I haven't heard any more from them on that account, but I did get a 90-day letter stating that I had to pay up this amount for the 3 years. And, so, I've petitioned the Tax Court, and that'll come up some time, I suppose.

But, then, the last 2 years, 1979-80, I figured, well, these experts down here in the IRS Office, I'll have them figure my income tax. Well, it seems as though they can't figure it either, because when I sent it in to Ogden, well, then they shoot it right back and tell me, well, there was a mistake made on it. Well, if the IRS agents can't figure it out, how in the hell do you expect an old dumb sliverpicker like me to figure it out? I always was proud to pay my taxes, but I refuse to be harassed any more. I'm thinking of divorcing my wife, because she doesn't want me to fight them, and I guess we're going to split the blankets, and I'm going to devote the rest of my life in a penitentiary, I guess, if I have to. I'd just soon be there as in the Pioneers Home, so that's the way it sits now.

Senator ABDNOR. Thank you, Mr. Lebert. So, as of the moment this controversy you've been having, then, has been a running thing for a number of years, and——

Mr. LEBERT. Yes.

IRS SERVICES TO TAXPAYER

Senator ABDNOR. You say the bank billed you a $1,000 bill.

Mr. LEBERT. Well, nearly. It's $952, I think.

Senator ABDNOR. For services that was asked for by the IRS, right?

Mr. LEBERT. Yeah. Well, they got this lawyer to intervene, and all he done was make sure the IRS didn't—he didn't want to get the IRS mad at him. He was just an innocent bystander. He didn't want to take sides either way, and he didn't do anything for my benefit, because I filed my own motions, and everything. And this late in the game, I'm trying to turn lawyer.

Senator ABDNOR. You're getting an education, I guess.

Mr. LEBERT. I sure am.

Senator ABDNOR. Any questions?

Senator STEVENS. You say in 2 years, you went down to the Taxpayers Assistance Office and had them help you fill it out?

Mr. LEBERT. 1979-80, yes.

Senator STEVENS. And Ogden rejected those?

Mr. LEBERT. Well, they always notified me that I owed more money, and that I had to pay them more money; that a mistake was made. So, I sent it in.

Senator STEVENS. That one, I think we ought to really get to. I can't understand that at all. How do you make—What do you do now? Have you been working at a pump station, right?

Mr. LEBERT. Well, I'm a carpenter and a millwright, and—but I've quit working, because if I get down—don't have any income, I ain't going to pay taxes. And I'm physically able, and I like to work. And—but—and I make good money when I work, but I ain't going to, if I have to put up with that harassment. It's going to take all my time to defend myself against them jokers.

Senator STEVENS. All right. You didn't claim you didn't owe them any money, right?

Mr. LEBERT. No. Hell, no. I don't——

Senator STEVENS. What did the $6,000 come from?

Mr. LEBERT. Well, that $6,000 was—see, I got ideas that I'm going to try to help my fellow man. I don't want any money in material things, and I set up a church in 1976. I'm going to be a minister, but then I get elected as president of the Carpenters Union, and I see so damn much graft in the union that I—see, there's these union officials, especially our business agent is ripping off the members, and he's sending guys out the back door, and—the ones that cater to him—and during the pipeline, he dispatched 79 carpenters out of the hall, and there's no record of any dues, or anything, that was ever paid into the union. All their names show on the dispatch list. And, then, there's all kinds of graft, and he gets double dipping and triple dipping on his expense accounts, and different things, and so I says, that's—I've got to quit the church part; I'm going to do something about this.

SUIT FILED AGAINST UNION

Well, last year, for example, I put in $6,500 cash to a lawyer here in town, Will Schendel. You can call him up and ask him if what I'm saying is true, and we filed a suit against him to—the business agent and our officers in the union for $600,000 that was money that they stole from the members; stole from the union. And, of course, that—as far as that's gone now, we've won the decision from the judge that they have to hire their own lawyer; they can't have the union pay for lawyers down in Anchorage to defend them. So, I don't ever expect to get that $6,500 back. I just wanted to try to bring about a little justice and—freedom and justice for everybody. That's what I'm trying to do.

Senator STEVENS. So, really the dispute comes over your deduction of the moneys that you contributed to the church, and expenses you incurred with the attorney in challenging the Carpenters Union, right?

Mr. LEBERT. That's right.

Senator STEVENS. And they disallowed those?

Mr. **Lebert**. They did, yes. I met with an attorney from Seattle and Anchorage; I went down there in June, and I talked it over with him. Like, I deducted for tools, and they didn't allow that. Well, millwrighting and carpentering, you lose a lot of tools, and so I deducted the fair amount. And, well, like protective clothing, they didn't want to allow that. And there was three items. Well, after talking to the attorney, a fellow by the name of Nelson, why, he allowed it. He said, well, sure, you have to have tools in your trade.

And, then, another thing they allowed there for a while, these pipeline companies, they would charge you—report your board and room as part of your income. Well, this board and room that you got in the camps was just there for the contractors' benefit. There was no other place for you to stay. You had to fly in there on their planes, and charter planes, and you had to stay in their camp. Well, then, they turned around and they'd put it as income on your—on the value of the board and room as your—on your gross income. And I deducted that, because I didn't figure that—that was for the benefit of the contractor. That was a big item. And they had me down for nearly $12,000. And I paid that off, and I didn't feel that I owed it, because it was money that I spent for union investigations, and things.

Senator **Stevens**. I understand. Thank you.

Senator **Murkowski**. Mr. Lebert, I have one question. Did I understand you to say that you had sent the IRS $6,000 to get them off your back?

Mr. **Lebert**. I paid it last week right down here in the IRS office, a $5,000 check and $1,000 cash that I had to borrow.

Senator **Murkowski**. Was that a payment on your account, or was it payment in full?

Mr. **Lebert**. Well, it's—the payment is full—that's what they billed me for; the figure that the attorney and I had arrived at in Anchorage, and he said I'd get a notice about this amount. Well, then, I started looking around to where I could get the money, and then when I got one from the—I think it was the Tax Court—a statement that I owed that much, why, I came—and they said I could pay it here or sent it to Ogden. So, I——

Senator **Murkowski**. As far as you're concerned, though, you're paid in full now?

Mr. **Lebert**. That's as far as I know, yes.

Senator **Murkowski**. Thank you.

RELEASE OF BANK RECORDS

Mr. **Lebert**. These other, 1977-1979 is coming up in Tax Court; the same as this 1976 was. Because I'd come here, like last fall, when they wanted Mount McKinley to bring my records, I instructed Mount McKinley not to do it. And they complied with that. And instead I came here with a witness, and I said, "Here's all my records; all the receipts I've got. Do you have any questions? Ask me, and I'll submit my proof, and we'll discuss it—settle it right here." They didn't want to see any of that. They wanted to—me to sign a waiver, so they could go into the different banks and get my records. And I said, no, I've got it right here. And let's settle it right now. Like, I donated—not to brag—but I donated a $1,000 to the hospital in 1977. And I said—I brought that receipt out. And, here, if you question my contributions, why, here I'll get all the receipts out and show them to you. But, no, they didn't want to see that. They wanted to go in there and snoop on their own in the bank accounts. Well, I've got nothing to hide. I deal mostly in cash, and from now on I am dealing in cash strictly, because I—it's a lot more convenient to deal through the bank, but if we don't have any protection of our records in the bank, and anybody can go in there and find out my business, it isn't that I'm—I've got anything to hide, but it's just the idea that I should have a little bit right to privacy.

Senator MURKOWSKI. Mr. Lebert, after paying the $6,000, can you give us some idea of what the aggregate that IRS is claiming for 1977-1979, roughly?

Mr. LEBERT. I think it's around $9,000.

Senator MURKOWSKI. Thank you.

Mr. LEBERT. I've got the papers in my briefcase in the pickup.

Senator ABDNOR. Thank you, Mr. Lebert. I believe Mr. Porter is—Don Porter, has he come into the room? Mr. Porter, do you have a written statement that you'd like to submit to the record, or——

Mr. PORTER. I have some records, but I——

Senator ABDNOR [continuing]. Well, no, I mean,—go ahead, then, with your testimony.

STATEMENT OF DON PORTER

Mr. PORTER. I appreciate your listening to me on this. I feel that I've always paid my taxes, and been a relatively law-abiding citizen. And IRS came up in 1979 when I happened to be involved in a grand jury investigation, as it happens, the same one Mr. Lebert was talking about. And within about a 6-week period, all of a sudden four different Government agencies fell down on top of me; one of them being IRS, in which they said that I owed $12,000 more than what I had paid. That particular year, they were talking about—I had made $42,700, some odd dollars. I had already paid over $13,000 in withholding, and they claimed that I owed another $12,000. And there were other Government agencies involved in this.

They eventually seized my wages, sent notices to every bank in town that I was a ding-a-ling, stating that I owed $12,000. I eventually went to the Inspector General's Office of the IRS, and before they even listened to me, they told me it was a mistake. I find it quite hard to believe that you can determine it's a mistake before you even hear the facts of the case. And in the conversations that I had with the Inspector General's Office, they more or less informed me that they really weren't too interested in investigating their own people; they were looking for people that threatened their people. That was their main job. It occupied 90 percent of their time. And after they looked into it, I received everything that IRS had seized. I received it back with interest. Of course, it didn't really relieve my reputation at all, because it's still in the recorder's office that they liened me for $12,000, and when they released the lien, they said the lien has been satisfied. Now, they owed me money at that time. I didn't owe them a dime. I believe they were either looking for a kickback or to get us off this investigation we were on. I know they put a whole bunch of pressure on me.

Senator **Stevens**. Now, which—I'm lost. Which investigation was this?

Mr. **Porter**. It was over the carpenters local, Senator. And which we had talked to the—I had personally talked to the grand jury foreman and assistant foreman and U.S. attorney, et cetera.

But I will tell you this, that it serve notice to anybody else that if they ever want to correct something like this, they know that they're going to get every Government agency down on their back. I consider myself a fair citizen, as I say——

OTHER FEDERAL AGENCIES WITH IRS

Senator **Abdnor**. Well, what other agencies got into this with IRS?

Mr. **Porter**. IRS, and the—what's the unemployment? That's a part of the Department of Labor, I guess. They shut off my unemployment, which I happened to be drawing at that time, without a hearing, and later they'd found out they'd made a mistake. They finally paid me the money. It was only 3 days before Christmas, and I was quite broke, and they withheld my checks for up to 1 month, and then admitted they'd made a mistake. And that's against the law, because they cannot withhold that without giving you a hearing. The NLRB changed dates on us on a hearing on this thing, and then when it came up, the attorney that was assigned by the NLRB told me personally and several other people that he really wasn't used to being on that side of the fence; that he was usually defending the union official, et cetera, et cetera.

I forget now who the fourth one was, but, anyway, the Internal Revenue Service, when they did seize my wages, a woman agent came out, and I was working as a carpenter, and she came out to the company I was working for and seized my wages, and then came out to talk to me. I was working there. And she explained what she had done. And I explained to her that I thought it was either harassment because of this investigation, or possibly they were looking for a little kickback. I wasn't really that sure. I wasn't as blunt as I'm being now, because I—and to this day—I don't know what they were looking for. But I explained to her, if she would just get the records that they had made their decision on to seize my wages and file these liens, that I could explain to her where they'd made a mistake. And I—in broad terms—had told her that it was impossible on an income of $42,700 to owe $24,000. And she agreed with that.

She then—I made an appointment for the next day. She was going to have all the records there. I went down to the office; took off work, which, not being a Government employee, lost the money. I didn't have the money going on, but I took off work, went down to their office, and they found that they couldn't find the records pertaining to the seizure of my property, my wages, et cetera. And so I said, well, you know, how long would it take, and she was sure within 3 days they could get duplicates of those records. And, so, I made an appointment for 3 days later, went down to their office, and they were still unable to find my records. Now, mind you, they're seizing my wages all this time, which was against the law, because they seized 100 percent of my wages, and we have a State law here requiring that a certain amount is left to live on, but they ignore that, because they're above God, and everybody else. This went on for about 5 months in which they were unable to find my records in which they had seized my wages and sent every bank in town and the recorder's office this information——

Senator ABDNOR. For 5 months you were working, and they were taking your entire paycheck?

Mr. PORTER. Yes. Oh, yes. Oh, they're—they make the Gestapo look quite simple. But this went on for quite a while. And I went down in the States, and I went to the Inspector General's Office. And this—I have to tell a little story. I had looked up the Congressional Record on this, and found out that in 1974 there was quite a scandal—or 1954—quite a scandal involving the IRS in which all the agents in the Boston Office had been taking bribes. It involved a sugar futures contract. And every agent there had taken a bribe. And it documented—you know, they had payoff checks, and everything else. And this was brought up in congressional hearings in 1954, and they asked that the Inspector General's Office be taken out of the IRS and allow the FBI to investigate the IRS. And this was quite a bone of contention and went to the conference committee eventually in which the final decision was they would allow it to stay in the Treasury Department. It would no longer be under the IRS, but would be under the Secret Service as being part of the Treasury Department. And this was to passify some of the Senators that were a little bit disturbed because nothing had been done on these payoffs.

Well, I called up the Secret Service offices, figuring they would be the people to investigate this thing that I had, and they didn't know anything about it. And come to find out, it was never transferred to the Secret Service. It was kept in the IRS, and they investigate themselves. And I find this somewhat confusing, because it's like asking the Mafia to investigate themselves. I can't understand the logic in having someone investigate themselves.

We have found by testimony by IRS Commissioners that they tend to lie a little bit. As Mr. Alexander, who I'm sure most of us realize was the IRS Commissioner in the earlier seventies, he stated to the Senate committee that this 7214, I believe—I have a copy of it here somewhere—that that would take care of the abuses from the—like the Nixon administration on the 600 enemies list where they use the IRS, and he told the Senate committee, which I feel is telling me, because we works for me, I pay his wages, and you, as my representatives, are an extension of me, and he was telling you, he stated, "Mr. Chairman, there's one provision in the Internal Revenue Code that does provide a restriction on part of the improper activities that you have described." Now, that was on the harassment of 600 well-known people on the enemies list, in which they went in and audited and reaudited and seized, and everything else, when they had no legal right to. But, anyway, he states in this statement, "Mr. Chairman, there's one provision in the Internal Revenue Code that does provide a restriction on part of the improper activities that you have described." In section 7214 of the Internal Revenue Code, there is a provision making it a crime for an Internal Revenue employee to knowingly demand from a taxpayer a tax other than what the law reasonably requires. Now, that is an outright lie. And I don't like somebody in a high position, a position of public trust, to lie to me, which he did. He lied to you, but he lied to me, because you're my representative.

There has never been a case where they have prosecuted one Federal employee under this code. And all these violations that he was talking about at that time, and knowingly he had never asked for a prosecution on them. They have—I don't know how many people have died through heart attacks, or worry, or whatever, from this persecution they have gone through.

Now, for someone like Mr. Alexander, who apparently is still held in quite high esteem, because I read in the paper here 2 or 3 months ago where he appeared in front of either a Senate or House committee to emphasize something on the budget. How anyone can lie like that and still be held in high esteem—now, this was the Commissioner of Internal Revenue. And the Commissioner before him was the one that investigated all these 600 people on the enemies list.

Senator **Abdnor**. Mr. Porter, I don't like to rush, but we are on a time schedule here, so if you could just bring this thing——

Mr. **Porter**. Yeah, no. OK, I'm sorry. Let me carry on. I'll forget that part of it. After—I went to the attorney—or the Inspector General's office. Within 3 days, I had a check for all the money they had seized, such as that. And then I checked the recorder's office, and they had released all the liens. But you know how they released those liens? They told a lie. They said the lien had been satisfied. Now, if you look it up in "Black's Legal Dictionary," "satisfied" means paid. And I did not pay them one dime. They had made a mistake, and then when they released the lien, they implied that I had paid them, which if I had somebody do a credit check on me, I am sure that it would show up that I am total ding-a-ling. They had filed a lien against me, and I had paid it, which is untrue.

REQUEST FOR RECORDS

Then, the Inspector General's office told me, because I had asked them to get all the records pertaining to the investigation of my case, because I felt it was shakedown or to get me off of this investigation I was on, I asked him to get certain records or all the records pertaining to my case. And he came back and told me that the records had been destroyed. Now, this was 7 months after this had taken place. Now, I have to keep my records for 5 years, and I believe it's a Federal law that all Government records have to be kept for at least 5 years, but, at least, more than 1 year, and this was less than 1 year, and they had been destroyed. I asked the—and he told me that it was perfectly all right for IRS to destroy the records the minute they were done with them. And I asked him if he would give me a letter on it, and I'm still waiting for that letter; it's been 2 years now—or 1½ years.

I came in—we have a 100-day season, the way we work; we mine, and I've lost 2 days out of that season now to come in here, and I'm glad that you were able to hear me. I don't think it's going to do any good, but it scares me. It really scares me when I think that I've got a child that's going to grow up in a government that is following the exact path that Hitler followed, if you follow his history. Up to 1939, he did exactly the same thing that these people are doing right now. They have taken our rights away from us, invaded our privacy; we have no right to court, or anything else. And they lie; they cheat.

I shouldn't go on. I get rabid on it. I thank you very much. Do you have any questions?

Senator **Abdnor**. Well, certainly, you've had your problems, and I don't know if you should feel that these things do no good. That's why we're here. We're not making any great promises, but it does give us the opportunity to bring these kind of matters out into the open, and you certainly brought up some very valid concerns.

Just one little thing, I thought I heard you say in the beginning that IRS notified all businesses around here?

Mr. **Porter**. Oh, yes. Sent notices to them, a tax lien. Now, I say all; I don't know how many they sent it to, but they sent tax liens to the banks; banks that I didn't even deal with; that I owed them $12,000. And I didn't. And they admit that they made a mistake. I have letters here from IRS admitting they made the mistake, but they still sent those notices out, and if you go down and get a credit report on me right now, it'll show up that I owed them $12,000, and I paid them $12,000, or, as in their words, I satisfied the lien. And I have never owed them any money, sir; never. I've always paid my taxes.

These people are criminals, and they should be put in jail. People like this Alexander that lied to a Senate committee should be put in jail as an example. They have killed people; the stress and strain that some of these people are under. I know what I was under. There's people that probably die because of that. Now, these people are horrible. They have violated a public trust. Any person working for the Government is in a position of public trust, and when they violate that, they should be punished.

IRS LETTER

Senator **Murkowski**. Mr. Porter, you don't have a copy of the letter that they sent out?

Mr. **Porter**. Yes, I do.

Senator **Murkowski**. Do you?

Mr. **Porter**. Yes. Could I give it to you?

Senator **Murkowski**. I think——

Mr. **Porter**. I'd like a copy back.

Senator **Murkowski**. Mr. Chairman, would it be appropriate to ask for the record that the letter from IRS—I assume it's the one you referred to as, "They said I was a ding-a-ling"?

Mr. **Porter**. Well, no.

Senator **Murkowski**. I know, but that's the——

Mr. **Porter**. I was being facetious.

Senator **Murkowski**. I know you were.

Mr. **Porter**. They said that I owed money; that I was—well, that I owed money.

Senator **Murkowski**. OK. That you owed money, and you have that letter. And, then, I assume you also have a receipt saying that you paid your obligation or it was fully satisfied.

Mr. **Porter**. Well, I have a letter from them admitting they made a mistake.

Senator **Murkowski**. OK. And do you know or did you ever ask for the IRS to send a copy of their letter indicating that you had paid or that they had made a mistake to the same group that they sent out the letters indicating that you'd owed them money; the banks, the credit bureau, whatever?

Mr. **Porter**. No, I didn't, Senator. And probably the reason was that I had read another one in which they had released a lien, in which they took a nine-page letter to say that they had made a mistake. They—I find that unacceptable. I mean, if—I make mistakes, and I'm willing to admit it. Now, why not just state in it. such as on the release of the lien, there was a mistake made by IRS, and this man did not owe any money during that time. Now, I can accept that, but they send—and this was on someone else—they sent a letter that was, I believe, nine pages long in which they never stated that, but just made excuses. And that is a waste of my money for some lawyer to sit up there and write a nine-page letter that doesn't really state the facts.

Senator **Murkowski**. I agree, Mr. Porter. Thank you. Do you have any questions?

Senator **Stevens**. No; thank you very much.

Mr. **Porter**. Thank you for listening to me.

Senator **Stevens**. We appreciate it.

Mr. **Porter**. Would you like a copy of that?

CORRESPONDENCE

Senator **Stevens**. I'd like a copy of that letter in which you say that they said that the lien was satisfied.

Mr. **Porter**. Could I pick up a duplicate of it?

Senator **Murkowski**. Surely.

[Off-record comments concerning letter].

[The letter follows:]

Internal Revenue Service · Department of the Treasury

Internal Revenue
Service Center

Western Region
Ogden, Utah

1160 W 1200 So., Ogden, Utah 84201

Donald K. & Florence M. Porter
15400 Marty St. (P-1)
Glen Ellen, CA 95442

Person to Contact:
Sherry Eckert
Telephone Number:
801-626-3831 (not toll free)
Refer Reply to:
580789:bh
Date: APR 26 1979

Re: SSN 563-44-2265
Form 1040 1975

Dear Mr. & Mrs. Porter:

The 1975 income tax return was submitted in the name of Donald K. Porter. The Forms W-2 represented wages earned by Mr. Porter and the letter attached requesting that IRS compute the return was signed only by him. For these reasons the tax was computed based on the "married filing separate" tax rates.

In adding your total income from the Forms W-2 you submitted, we used the amount of $38,856.71 as income earned from Fluor Alaska, Inc. I apologize for this error. However, Copy B was not clear and you can readily see from the copy enclosed why the erroneous amount was used.

I am correcting the total income on your return to $42,740.65. The tax will be computed from the "married filing joint" tax tables resulting in a correct tax liability of $11,191.00. The overpayment will be refunded including interest within the next 3 to 4 weeks.

If you have any questions you may contact me at the above telephone number.

Sincerely,

Sherry Eckert

Sherry Eckert
Data Processing Specialist

Enclosure

Date 8-17-78

[illegible]
Internal Revenue Service

To: Alaska International Construction
Fairbanks AK

Notice of Levy on Wages, Salary and Other Income

Originating District
Anchorage

You are notified that there is now due, owing, and unpaid to the United States of America from the taxpayer whose name appears below, the sum of → $ 12,857.81

Kind of Tax	Tax Period Ended	Date of Assessment	Taxpayer Identifying Number	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12-31-75	1-2-78	563-44-2265	$ 12,015.90	$ 841.91	$ 12,857.81
					Total amount due	$ 12,857.81

Interest and late payment penalty have been computed to 9-16-78. Additional interest and late payment penalty will continue to accrue until the balance is fully paid.

Demand has been made upon the taxpayer for the above amount, and the taxpayer has neglected or refused to pay. The amount is unpaid and still due.

Chapter 64 of the Internal Revenue Code provides a lien for the above tax and statutory additions. Accordingly, the following items are hereby levied upon to satisfy this liability: (1) all wages and salary for personal services which you now possess or for which you are obligated, from the date the levy is first made until the above tax liability is satisfied or becomes unenforceable because of lapse of time and a release of levy is issued, and (2) other income belonging to this taxpayer which you now possess or for which you are obligated. The above wages, salary and other income are levied upon only to the extent that they do not include amounts specified as exempt from levy under section 6334 of the Internal Revenue Code (cited on back of this levy).

Demand is hereby made upon you for the amount necessary to satisfy the above tax liability. Amounts received from you will be applied as payment on this tax liability. Please make your checks or money orders payable to the Internal Revenue Service, and mail them to the Internal Revenue Service address appearing immediately below.

Signature	Title	Internal Revenue Service Mailing Address
Annette Schneider Annette Schneider	Revenue Officer	Box 8, Federal Bldg 101 12th, Fairbanks AK 99701

Taxpayer's Identifying Number

(Name and Address of Taxpayer)

Donald K. Porter
655 9th Avenue
Fairbanks AK 99701

Certificate of Service

I certify that this notice of levy was served by delivering a copy of it to the person named below.

Name [illegible]

Title [illegible]

Date and Time [illegible]

Signature of Revenue Officer or Service Representative

Form 668-W (12-76)

[illegible]

DISCUSSION OFF RECORD

Senator **Stevens**. Let's just go off the record here, all right?

STATEMENT OF JIM LUNDGREN

Senator **Stevens**. Jim Lundgren, you're here. Would you like to proceed now? Senator Abdnor was called to the telephone. He'll be back very quickly.

Mr. **Lundgren**. Do you want just a narrative, or how do you——

Senator **Stevens**. Yes, we'll print the letter you sent to all of us in the record, Jim. And why don't you just tell us in your own words what the problem is that you set forth there.

IRS AUDIT OF COMPANY

Mr. **Lundgren**. Well, I have to go back to 19—the early part of 1979. The Internal Revenue told me they was going to audit me, which is fine, and my company at that time. And then about 4 months later, the audit started. And immediately they come up with the fact that I owed them about $24,000. So, that's what I ended up paying for that year. I owed them $127,800-some, which was absolutely an impossibility. In other words, I had paid somebody good money to make my statement each year, and my tax was turned in on the basis of those figures.

But, anyway, after about five or six sleepless nights, I got an auditor to go out, and about 4 hours he come back, and he said, "Well, you have about $10,000 credit coming." And this went on and on. The gal that handled the audit for the Internal Revenue, in my opinion, was very arbitrary. She would not give on any point and didn't to the last thing. In other words, she would not give any credit. I ended up paying $28,000 a year ago and just last week I got $55,000 back from the Internal Revenue. In the meantime, while I've had that money coming from the Internal Revenue, I've paid them over $70,000. Now, there should be some way of giving a credit toward income taxes on money you have coming and admittedly so.

Now, this cost me—the money I got back from the Internal Revenue cost me in auditing fees. I come out even. The Internal Revenue lost. And due to their opening of this thing back up again, it has cost them a lot of money. In other words, there should be economics in Government as well as everything else. All I wanted to do was just leave it alone. There was 1 year that there was a mistake, but the other years, the mistakes were the other way. I had a lot of money coming back; 1 year $30,000-some; another year, $23,000; and another year, $300 or $400; and another one, $1,300. In other words, I'd overpaid. And I'd always left money—in the past, I'd left money generally as a credit, and the Internal Revenue, they'll always use it. In other words, there was money there. I think at the time this happened, it was around $7,000 or $8,000 sitting with the Internal Revenue, which I have now got back. I'll never do that again. But I had done that for years.

I don't know why they—when a gal goes through, and she picks out 1 year and finds there's a mistake in it, why they won't look at the other years. And in our proving our case, we not only come up with the checks, we had to come up with the invoices. And you can imagine, that's a lot of work. And every time they'd come around, they'd—have your answers in 10 days. I'd have my answers in 10 days. But, by golly, when I got around to giving them the answers to the Internal Revenue, the gal would be on vacation in Hawaii, or some place like that. In other words, it would be another 60 days before I heard from them. This went on, and on, and on. And it cost a lost of money.

In the meantime, I would have liked to have had my money out—in the capital fund, rather than setting over there in the Internal Revenue. But my main complaint is just plain bungling on the Internal Revenue, and that's what it is. You can call it anything you want, but I can prove that.

Also, the word of the gal that did it is not good. When she'll agree to something one day, and the next day change her mind, why, that just shouldn't be in our Government. In other words, if they agree to something, they've agreed to it. But this happened, too.

I, personally, have stayed away from this, because I'm not supposed to get mixed up with things with a lot of stress, and what not, due to health, and I have stayed away from it. And it is finally settled. I've received a couple of apologies, about three of them, from the Internal Revenue, but not from the gal that done—that caused all the trouble. And——

Senator STEVENS. How long did you have waiting for those refunds?

Mr. LUNDGREN. Oh, I've been waiting over 7 months, since they was agreed to. I think we made a mistake not knowing the full way the Internal Revenue works, to start with. We sent it in direct to Ogden for our refund, and it has to be agreed to, I think, locally first, and that was finally done about 90 days ago. But, actually, locally they didn't seem to want to agree; that is the gal that did the auditing.

COST IN ATTORNEYS AND ACCOUNTANTS FEES

Senator STEVENS. And what did it cost you in attorney's fees and accountants' fees to do all that?

Mr. LUNDGREN. About $9,000. The first accountant I had, Dave Kern, he died from cancer in the middle of it, so I had to get another one. And, actually, the second accountant, he just took the figures from the first and kept arguing on them, and finally won. When they'll come up with something like $40,000 gift tax—I forget what they call it—but I was supposed to have made over buying a building, which I paid $5,000 more than they were asking for at the time, but they wanted cash, and they owed me money, so this was a way of settling it; to come up with $40,000 that I'd received as a gift because of that, because I'd managed to sell it on time for about that much more, but that also went haywire; in other words, that time sale cost me money, which they sometimes do. It's come out all right again now, but——

Senator MURKOWSKI. Jim, you indicated to Senator Stevens that it was roughly 7 months before you got the $55,000?

Mr. LUNDGREN. Right.

Senator MURKOWSKI. And what kind of interest did the Government pay on that?

Mr. **Lundgren**. I believe they give me 12 percent. I'm not sure. I never figured it out. Truthfully, I haven't had a breakdown yet. I got a phone call, they told me how much in interest was in it, but I've been waiting for the breakdown from the Internal Revenue, and I think I will get that pretty quick.

Senator **Murkowski**. And at what rate would you anticipate you could have invested those funds?

Mr. **Lundgren**. At about 16 percent on the average.

Senator **Murkowski**. Sixteen, seventeen percent maybe?

Mr. **Lundgren**. Yeah. Actually, right now, I'm getting——

Senator **Murkowski**. So, you lost 5 percent plus 7 months' use of the money theoretically?

Mr. **Lundgren**. Right. In the meantime, I've written them about $70,000. What I'd like to have done is see some method where they could credit. You know, I paid my $23, while I knew I had—at that time, it was $46; I imagine the rest is all interest, or pretty close to it—but I paid that $23 or $24,000, and knowing that I have about $40-some coming back, and them knowing it, too, I don't understand why there can't be a credit?

Senator **Stevens**. I don't either. You know, it was a common theme in the hearing in Anchorage, and it seems that whenever a refund sneaks into the picture, that it complicates the whole procedure, as far as the Internal Revenue is concerned. I think we're going to require some explanation of the procedures, and find out why the computer can't read the minus signs, if it can read the plus signs.

Mr. **Lundgren**. I agree. It was explained to me that there has to be a special case. And I said, well, what's the matter with a special case? Well, it's a lot of work. Well, so is being without that money. I can live without the money, as far as that goes, but a lot of times you want to put money into something, you don't want to go down to the bank to borrow it; in fact, I owed $50,000 to the bank one time and was paying 19 percent for that during this.

Senator **Stevens**. Yes; well, you've got a point.

Senator **Murkowski**. The $9,000 you expended for professional services, you, and your bookkeeper, your staff, the thing had gotten so far that there's no way you feel you could have resolved this without professional services?

Mr. **Lundgren**. There is no way; no. No; I—in other words, it was a company. We used to do around $10 million a year, and, truthfully, I sold my company in the meantime. Now, I have to go out into their books, which belongs to the new owner, and dig out invoices, and proof, and one thing and another. It was a time-consuming thing, and it cost a lot of money. And I would say that I got by real good. It probably could have been close to $20, if I'd have went certain ways.

IRS METHODS QUESTIONED

I don't object to the Internal Revenue. In other words, the Government has to have money to operate with; that's fine. But the method that they're doing some of these things is absolutely wrong.

Now, since this has happened, the girl that works for me in the office, she's been audited. My son has been audited. Everybody in the family or anybody that had anything to do with me has been audited. Now, don't tell me that that's just a mistake. It isn't. It just doesn't happen that way. In fact, the girl that works for me, they found a $13 mistake, and rather than just overlook that, they had to keep that $13 mistake in there, because without a mistake, there'd be 2 years without an audit, and they want to be sure they can audit. That's why they kept it in there, or put it back in there.

Senator **STEVENS**. Well, we'll get some answers for you, Jim, I hope.

CORRESPONDENCE MATERIAL

Senator **MURKOWSKI**. Thank you, Jim. The material which you have submitted will be placed in the record at this point.

Mr. **LUNDGREN**. OK. Thank you.

[The information follows:]

James Lundgren

P. O. Box 1051 ~ Fairbanks, Alaska 99707 ~ (907)452-6931

30 June 1981

Honorable Ted Stevens
United States Senate
260 Russell Office Bldg.
Washington, D. C. 20510

Honorable Frank H. Murkowski
United States Senate
Washington, D.C. 20510

Honorable Donald E. Young
House of Representatives
2331 Rayburn House Office Bldg.
Washington, D.C. 20515

Re: Internal Revenue Service
James Lundgren SS#535-16-0091
Document Locator No.: Various
Case #IRS 81-093

Gentlemen:

The time has come when the taxpayer must demand changes to the handling of tax matters by the Internal Revenue Service. Not only is it now necessary for a majority of people to hire accountants to prepare their tax return but also necessary to hire an accountant and/or attorney to represent them during an audit. It takes a tax library and 40 hours a week to keep up with what is going on. No matter which way you go, just trying to comply with our tax laws is an expensive process.

I was advised early in 1979 that my taxes were to be audited for two years (1976 & 1977). Having retained the services of an accountant to prepare my taxes for the last 20 years I didn't feel this would be a problem.

After several months of examination by a local IRS Representative I was advised of a lot of tax ramifications which lead to a monetary change of additional taxes of $68,000 one year and $29,000 the other year. I was also charged a negligence penalty for not reporting all my income.

At this point I was a little upset and knew if I was ever going to get justification I would have to hire an accountant and perhaps an attorney. I wasn't able to retain the accountant that did the preparation of the original tax forms for those years so I selectively retained another. My bookkeeper and new accountant spent hours going over papers, tax laws, hunting files, etc. in preparation for another meeting with the IRS representative. At this point we are another 8 months down the road and into the latter part of 1979. After several more meetings with the IRS my accountant was hospitalized and later died of cancer. We still hadn't resolved my tax problems.

Another accountant was hired and finally in September, 1980, the results of the audit were filed as follows:

1974	Refund	8,447.00
1975	Refund	4,182.00
1976	Add'l tax	25,990.00
1977	Refund	4,633.00

The total 4 year change per the audit was an additional $8,728 owed by me. I felt the credit would be allowed against what was due and I would be billed for the difference.

Due to findings during the audit it was agreed to file amended returns for the years 1975 and 1976 which would result in additional tax refunds as follows:

1975	Refund	23,238.00	- Int. 6,033.39
1976	Refund	19,289.00	- Int 3,836.15

Both the audit results and amended returns were submitted to Ogden in September 1980.

In December 1980 I received refund checks for the audit years 1974 and 1977, nothing for the year 1975. I also received a bill from IRS for the $25,990.00 plus penalty and interest in the amount of $32,776.42 and a letter advising me if it wasn't received in 10 days the law authorizes them to seize property, wage or other assets to satisfy this unpaid tax. At this point they still owed me a total of $46,709.00.

The local IRS office, collection division, was contacted and advised of the situation. They sympathized but wanted payment and suggested we then go to the "Problem Resolution Officer" to hasten the refund process. With the collection matter out of the way they were sure a refund would immediately be forth coming.

On the 31st day of December 1980 the payment was made to the local IRS office in the amount of $32,776.42. A letter was given to them at that time requesting information regarding the refunds. I might also mention at this time the prime interest rate to borrow money was 18.5% and to me two more points.

On January 12, 1981 a letter with copies of the amended returns were sent to the Problem Resolution Officer in Anchorage. The Anchorage office was contacted by phone several times in January, February & March 1981. We did receive one form letter from them advising us they were working on it and would be in touch with us as soon as possible and to keep them advised if we have a change of address.

In May our local IRS representative again visited my office for another review of the amended returns. It is now the first of July 1981, and five more phone calls down the road. I'm required by law to make additional tax payments and deposits for the years 1980 and 1981. I've put out an additional $8,000 to $9,000 in accounting and bookkeeping expense and I STILL DON'T HAVE RESULTS.

Perhaps your assistance will help resolve the matter and future legislation will prevent the same thing from happening in the future. I take note President Reagan's taxes were handled much differently and I'm sure that each of you who set in the House of Representatives or Senate aren't subject to this abuse.

Yours truly,

James Lundgren

James Lundgren

JL/ed

cc: IRS, Ogden
IRS, Anchorage
IRS, Fairbanks

[illegible] checked [illegible] that I did have on your file [illegible] with check ✓

		Pmts. made + Received Princ.	Int. Penalty	Date
tax left on Deposit 1979	5262.00 ✓			
Audit Results – 1972 (Refund)	— ✓			
1973	—			
1974 (Refund)	8447.00	8394.55	3552.37	12-15-80
1975 (Refund)	4182.00			
1976 (tax Due)	⟨25990.00⟩	25990.00	6656.47 - Int. 129.95 - Pen.	Pd 12-31-80
1977 (refund)	4633.00	4633.00	966.27	12-15-80
Amended Returns – 1975 (Refund)	23238.00			
1976 (Refund)	19289.00			
1980 (tax Due + paid)	31689.00			
1981 (Left on Deposit 1980)	8911.00			
1981 (Add'l tax Dep. made)	8000.00			

Statement of Account NOT Received From IRS, with the payments for the years which were Rec'd 7-27-81

1972,	359.65
1975	29,271.39
1976	23,125.85
1978	1,877.47

On December 31, 1980 when I made my pmt. (under protest) for 32,776.42, IRS owed me or I had on Deposit a total of *60,296.36. After that time I made add'l tax pmts. or Deposits in the amount of 48,600.00.

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United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

July 17, 1981

Mr. James Lundgren
P. O. Box 1051
Fairbanks, AK 99707

Dear Jim:

Thank you for contacting me regarding your problems with the Internal Revenue Service.

I have written to the IRS on your behalf. I will get back to you when I receive a reply.

With best wishes,

Cordially,

Ted

TED STEVENS

STATEMENT OF MARY CANNON

Senator **Stevens**. Thank you very much. Mary Cannon? This will be our last witness. We have to—have a chair, Mrs. Cannon, please. Right there, please. Right up there.

Mrs. **Cannon**. [Inaudible.]

Senator **Stevens**. That's so the other people can hear you. That's a microphone.

Mrs. **Cannon**. Oh, I understand.

Senator **Stevens**. This will be our last witness before lunch. We have to go have a meeting, and we'll be coming back into session at 1:30 when we come back.

Mrs. **Cannon**. Sir.

Senator **Stevens**. Please, Mrs. Cannon.

Mrs. **Cannon**. Thank you. My matter is a most trivial one in comparison to Mr. Lundgren's, but it was the principle involved, sir. And if I'm a little blurry, it's because I was working all night, and I apologize.

Senator **Stevens**. Well, thank you for coming. We would like to hear about it.

DIVORCED TAXPAYER BILLED UNDER FORMER MARRIED NAME

Mrs. **Cannon**. I have scribbled a statement. I would first like to clue you into the background, sir. I was married for more than 13 years. I've lived in Alaska since 1958. I've only been employed at one position, and that is with the post office. And as you know, I would only have the W-2 as my statement. I moved from my home to an apartment, taking my minor child with me in 1977. And I was under a great deal of emotional stress and physical stress. I was quite ill at the time directly and indirectly through my pending divorce. And, anyway, 1977 or 1976, I'm sorry, I'm not sure, that was the last year that I filed a joint return with my then husband, Joseph Bush. And I turned my W-2 over to him in good faith. Our oldest daughter was a CPA candidate at that time, and in good faith she took whatever her father's papers were, and filled out his return for him to help him. He brought it over to me. I signed it; thought no more of it. And a year or so later, I was at work, and the clerk said, "Mary, will you please sign for this?" It was to Joseph H. and Mary L. Bush, a certified letter from the IRS, stating that due to his nondeclaration of retirement income, of which I sort of knew, but didn't know. I just wanted to get him away. I didn't want to read the statement. My daughter had filled it out, and I know that she's an honest person and has an excellent tax background. I didn't worry. I signed it. So, they said because of that, we owed over $600, and—well, I sent it on to him certified; thought nothing more of it, because I felt that it was his responsibility. I had a lot of other problems at the time. It was only $600-some-odd, but the point I'm making in my rambling way is that I'm an American citizen from choice in spite of a lot of things. I'm very proud to live here. And I just feel that it's not right the way that I was treated. That is why I complained at this time. I had no more—no more contact with the IRS. They may well have—I had filed a change of address. I was getting my mail to a box at the airport, and it was on my W-2's, if they had no other way of knowing this.

I remarried in March 1979, and my husband and I filed for our State income tax refund—you know the one.

And then—Oh, he received his, and I said, "Oh, it's just, you know, a game," and didn't worry about it too much, but then it went on for several weeks. And I had a letter, just a notice, from the IRS—I'm not sure, but I believe it was in my former name—to my correct address, stating that through the State of Alaska, they had possessed my refund check, and I still owed them $22 and something. Well, I realized that there was a legality involved, and that money was owing, but it's just the way that it was handled. I'm in Government service, and I still believe in the old-fashioned belief that the Government is there for the people. And I don't feel that it was right the way that it was done.

It was, as I say, a very minor thing, and—I just don't like their tactics. I have had other vague experiences in the past, which have irritated me, but this I don't feel was right.

Senator STEVENS. You had no notice from them after you sent the——

Mrs. CANNON. No, sir. No, sir.

Senator STEVENS [continuing]. Original letter to your ex-husband?

Mrs. CANNON. They may well have notified my former husband; this, I don't know.

FEDERAL ATTACHMENT ON STATE REFUND

Senator STEVENS. And the next thing you knew, you had an attachment on your State refund.

Mrs. CANNON. Well, I was going to call—as a matter of fact, I was going to call the ombudsman, of all things, to find out just what had happened, and—then this came. And I am still under a certain amount of stress from my former marriage. There are still quite bad things happening, and I figured, was it worth it? And, then, I thought, well, if you were coming, sir, I have the greatest respect for how you operate, I thought I should just let you know for other people's sake, because it's not right. There's a great deal wrong with the way that our Government operates these days, and it worries me, and it's the minor things.

Senator STEVENS. And you didn't even have an opportunity to explain it to IRS——

Mrs. CANNON. No, sir, I wasn't——

Senator STEVENS [continuing]. Because you had no notice they were going after it.

Mrs. CANNON. Oh, no, sir. And certified letters come like leaves in the fall through the post office. They know. The point was, they had my W-2's. They knew my money; they knew what I'd paid to the State; they knew my social security, and it was elementary. With our sophisticated computer system, I'm quite sure they know when you take a vacation any more. But they didn't have the basic courtesy; that is the point I'm making. And I do feel that we all have basic rights as citizens. It really worries me, sir. This Government is——

Senator STEVENS. The procedure seems to be designed to treat us as if we're criminals, do you have that feeling?

Mrs. CANNON. You're guilty before you're proven innocent, and the indisputable proof is always on the person. Just from firsthand knowledge, I know of people that have made incredible amounts of money on the pipeline that have done very bad things, but they're tax free and laugh at our Government. I see money going into food stamps, welfare every day; I don't care. I feel that a lot of people that deserve it, don't get it, because of their pride. And it hurts. I know people at work that are young people that have quit work, because, bluntly, they're making more money on welfare and food stamps. I can give you two instances now of women that have quit work in the last 6 months, and it's outrageous. Maybe I—I don't know; maybe I was indoctrinated to the wrong principles.

Senator STEVENS. No, we agree with you. Right?

Mrs. CANNON. I'm sorry, sir, and I do appreciate this.

Senator MURKOWSKI. Mrs. Cannon, hopefully, we're going to able to do something about tightening up the welfare and the food stamp situation. I would certainly hope so, and that is being considered in the Congress of the United States at this time.

I assume that what they did attach was the entire $600.

Mrs. CANNON. Plus, I believe I owe them—I'm not sure of the figure—I know it's $22-something, that I'm going to——

Senator MURKOWSKI. And——

Mrs. CANNON. You see, he's not employed now. He had retired prior to this, and when I did mention to him that—I asked him upon one of his violent attacking occasions whether he had received—I certified it; I did recertify that statement to him, and his exact quotation was that, "You're working, you pay it." And that's his entire philosophy.

Senator MURKOWSKI. So, in other words, as far as you're concerned, you felt your husband——

Mrs. CANNON. My former husband.

Senator MURKOWSKI. Your former husband, had the obligation.

Mrs. CANNON. I felt that morally and ethically, he was the cause of it. I had given him——

Senator MURKOWSKI. And as a consequence, they couldn't collect it from him, so they went to you.

Mrs. CANNON. Well, that seems to be——

Senator STEVENS. The exclusion, it was his retirement income, wasn't it?

Mrs. CANNON. Oh, yes, sir. The facts were all there. I never—my entire——

Senator STEVENS. All right. Well, we sure do thank you.

Mrs. CANNON. Thank you, sir.

Senator STEVENS. Thank you for taking the time.

Senator MURKOWSKI. We very much appreciate your testimony, and——

Mrs. CANNON. I thank you, sir, very sincerely.

Senator STEVENS. Particularly when you've been up all night. We appreciate it very much.

Senator MURKOWSKI. Thank you.

HEARING RECESS

Senator STEVENS. This will finish the hearing, as I stated, until 1:30. We'll be back in session at 1:30. And those people who did not get a chance to testify this morning on the list, we hope you will notify the staff, if you intend to testify this afternoon, because we intend to call the names this afternoon one more time, as we do want to hear as many people as possible. So, please notify the staff, if you are going to testify.

The committee will stand in recess until 1:30.

[Whereupon at 11:30 a.m., the hearing was recessed to reconvene at 1:30 p.m. the same day.]

[AFTERNOON SESSION, 1:30 P.M., THURSDAY, AUGUST 6, 1981]

NONDEPARTMENTAL WITNESSES

STATEMENT OF DEAN FARRIS

NOTICE OF TAX DEFICIENCY

Senator ABDNOR. We're back into session. I was wondering, has Dean Farris—has he showed up this afternoon?

Mr. FARRIS. Right here.

Senator ABDNOR. We missed you this morning. So, if you would care to come forward, I will take you at this time. Do you have any written statement at all?

Mr. FARRIS. No, not really; no. I think that my problems with the IRS are pretty small compared to some of the complaints that were heard here this morning, but I guess they don't discriminate. They screw everybody up.

But mine started in—when I filed my return for 1976. And what happened was I thought I had a $300 refund coming when I filed the return, and instead of that I got a notice in deficiency for $792. And this little piece of paper right here is what started it all. I got this, it's a form 1099, and I got this before I filed the 1976 return. And it says it's a statement for receipts of interest income, and it tells me that I have to show what—the amount on this form on my 1040 for 1976, so I did. And the amount that's on here is $48.17 in interest paid or credited it to me. And they said this is the interest from a prior year that I—where I made an overpayment. And, so I claimed this on the 1040 for 1976. So, they came back with an assessment of additional tax for $792. So, I started writing letters, and they wouldn't tell me where they got their figures. I kept asking them to justify, you know, how do you get this $792? They never would do that. I got deficiency notices, threats of seizure, collection agreements, all kinds of things; anything—any loose papers that they had laying around the office, I think they just stuffed them in an envelope and sent them to me.

So, after I contacted my congressional representatives about it, and wrote back and forth about 2 or 3 months, then I finally got a letter from the district director, and this was here, a fellow named Robert Terry, and he finally justified it here. And, so, he starts out with——

Senator ABDNOR. That's what you were seeking in the——

Mr. FARRIS. This is what I wanted to begin with. I wanted them to justify——

Senator ABDNOR. How long did it take you to get that? And, besides, you had to write your Members of Congress.

Mr. **Farris**. Pardon me?

Senator **Abdnor**. But how long was it from the time you set out till you finally received it?

Mr. **Farris**. Well, OK, this letter's dated September 23, 1977, so I filed the return for 1976 sometime early in 1977. So, it took probably about 120 days to get this. And this was about the simplest mistake that you could—you know, it's so simple. Anyway, he's got an adjusted gross income down here which consists of two items, W-2 wages, and interest income, which totals $4,800.17. So, they took an entry that I put on the 1040 of $48.17, that they said that they owed me, and turned that in to a $4,800.17 that I owed them. OK. Now, that put me in a higher tax bracket, and that's where the $792 comes from. All right.

Now, then I started writing letters again to the IRS and telling them, hey, you made a mistake, and I want my money. You owe—you know, you owe me money. And they didn't pay it. I got more deficiency notices, and more legalese, and baffle-gook. And, so, then I went back to my Senators and Congressmen, and I don't know how much staff time they put on it but there was a lot of letters going back and forth to the IRS, and to me, and they sent me a copy of everything that they sent to the IRS, and a copy of everything the IRS said to them. And, I finally just gave up on it, because nobody seems to be able to—you know, to correct this simple——

Senator **Abdnor**. Where are you now?

Mr. **Farris**. I've forgotten all about it, you know.

Senator **Abdnor**. I mean, did they drop pressing for the $4,800?

Mr. **Farris**. They stopped sending me collection notices.

Senator **Abdnor**. And it all started out with the $4,800.

Mr. **Farris**. Now, that's all they've done. They haven't sent me—they've sent me some summons for books and records since then for the two—for 1977-78, for records that I don't have, and that I'm not required to keep by law. They've threatened to seize; they put a tax lien over here on me. It's a good thing I'm not applying for credit anywhere because I sure wouldn't get it.

And I was told yesterday that I didn't need to bring any documentation. And—because if this committee wanted to do anything about it, they would get the information out of the IRS files. And if anything that I've talked about here is not in the IRS files, I'll be happy to give this committee whatever I've got here.

SIGNING OF WAIVERS

Senator **Stevens**. Have you signed one of those waivers?

Mr. **Farris**. Yes, I did. I put for any year you want to get my tax returns, or any letter that I've written to the IRS. And——

Senator **Murkowski**. Tell me, Mr. Chairman, in that last letter, they indicated that you—they had resolved the $4,800.17 claim?

Mr. **Farris**. No, he's trying to justify here—this one is one from Don Young. Now, he's—or to Don Young. Well, no, a copy of this went to Young. Anyway, he's trying to justify here why——

Senator **Murkowski**. You owe $4,800.

Mr. **Farris**. I owe the $792 more. And the difference between his figures and my figures is I show a $48.17 interest credited, and he shows $4,800.17. And the only reason I put this—this $48.17—on the return is because I got this from the IRS, and they told me to do it. Now, what this thing says is:

> The amount at the left is interest we paid or credited to you in the calendar year shown and is on an overpayment of Federal tax. It must be reported as interest income on your Federal Tax return. A further explanation is on the back.

And there's about 2½ lines of explanation on the back that is just—you know—a general statement. It has nothing to do with why they're giving this to me.

Now, when I sent this in with the return, I attached a letter to that return, and I said—about this thing, I said, "The amount in item 11 of 1040 is not an admission that I have received interest income. I have not. I have no overpaid taxes for 1975. I informed Ogden about it to no avail. I suspect form 1099 is another one of your tricks." And that's exactly what it turned out to because they turned $48.17 into $4,800.17.

Senator **Murkowski**. But they have not acknowledged that——

Mr. **Farris**. No, definitely not. No.

Senator **Murkowski**. $4,800? OK. And you maintain that——

Mr. **Farris**. I don't—I think they slipped up somewhere. I don't——

Senator **Murkowski**. You have a $48 refund coming, is that right?

Mr. **Farris**. Pardon me?

Senator **Murkowski**. You maintain that you have a $48 refund?

Mr. **Farris**. No, I maintain I have roughly a $300 income—or return—or refund. I didn't make any money that year. And, but when they added $4,800 to it, that was enough to kick me into another bracket. And then I owed them $792, according to them.

Senator **Abdnor**. You also say——

PROBLEMS WITH STATE REVENUE OFFICE

Mr. **Farris**. I don't think this was a mistake. I think it was harassment for the way I filed the return, OK? In 1975, I had some problems with the State, which resulted in a lot of procedural irregularities on the part of the State. So, I got pretty concerned about it. And on my Federal and State returns for 1976, I claimed my right not to witness against myself. All right. Now, I've subsequently found out that that doesn't really fit my situation. The Judiciary Committee may say that people can do that. They have said that. But it doesn't fit me, so I haven't done that since 1976. But I think the reason all this started, that they turned $48 into $4,800 is sort of harassment and retaliation for my doing it. And I've——

Senator **Stevens**. Have you ever talked to any of the people in the office here about this?

Mr. **Farris**. I've talked to the guy who issued the summons to me. And you can't really talk to these people; it's impossible. It's like talking to a fence post. They've been told, or instructed, or something, you know, to get some money from this guy. And that's what they're going to do.

Senator **Stevens**. Did you ask them about the $4,800?

Mr. **Farris**. I don't think so. I didn't really want to talk to anybody about this locally, because Ogden created this problem. It wasn't—this problem wasn't created here locally out of this problem. This problem was created by Ogden. And they sent me a couple of letters, and told me that I should talk to somebody locally, but I don't see why to involve more people in this, because the more people you get involved, then the worse it gets. This thing has grown. And, I don't know, I had two Senators, a Congressman, the district director in Ogden, the assistant district director, and I don't know how many staff people, you know, becoming penpals, or something, on this over, you know, just a few bucks here. And I—this was harassment, because I sent them a letter and told them they made a mistake, that they—somebody moved the decimal. The assistant district director, who was a guy at that time named P-e-c-o-r-e-l-l-a, and this is a letter to him, which is dated February 16. It's a reply to a letter that he wrote to me, which was dated February 7, 1978. And among other things, I say, "The assessment is incorrect. It's mostly a matter of someone in your department having moved the decimal point in the only entry that I made on the form two places to the right." Now, this—I claimed the fifth amendment on that return. This—the interest that this statement shows is the only figure that I placed on the return, so out of one entry on that return, they screwed it up.

Senator **Stevens**. Let us have copies of those, will you?

Mr. **Farris**. I did—when I filed the return that way, I did attach my W-2 statements to that return, so the IRS did have figures from which a tax could be computed, even though I didn't enter them on the return. I put W-2 forms with it that showed every dime that I made that year. So, they had information on that return that they could have computed the tax from. As a matter of fact, Mr. Terry goes into that in one of the letters I've got. He says it wasn't there, and then about a paragraph later he says it was there.

Senator **Stevens**. Let us have copies of those that you just had there, will you?

Mr. **Farris**. OK, all right.

Senator **Stevens**. So we'll be sure to have them for the record.

Mr. **Farris**. When I get done here, I'll give you some copies of it. I've got a lot more letters; I didn't bring all the copies, but, anyway.

Senator **Stevens**. Well, we don't need all of those. We just need that one where—that $4,800, and the letter that was sent to Congressman Young might be helpful.

INTEREST INCOME

Mr. **Farris**. OK. All right. Well, I still can't figure out exactly where this interest income, the $48.17, comes from. I got this in one of those little brown window envelopes. There's nothing in it except this little piece of paper. So, I'm really—I don't know where--it just, you know, dropped out of the blue somewhere.

But I argued with them about my refund for 1975, which they cut in half and maybe they were justified in doing it. I don't know. The accountant who figured it for me in 1975 skipped town. He messed up a lot of people, but—whatever.

I don't know—I still don't know where the $48.17 came from, but if I hadn't listed it, if I hadn't put it on there, then I don't think I'd have had the problem. They couldn't have turned it into $4,800 of interest income. And I sure would like to have had $4,800 interest income.

Senator **Abdnor**. Well, we'll see what we can do.

Mr. **Farris**. OK. And the other thing, I want to go into this summons a little bit. They asked me for records that the law doesn't require me to keep. For partnership records, all kind of stuff like that, and I have never filed a return that would indicate that I was in business. And that was issued from the local office. Now, I don't know whether they're fishing or whether they don't know what they're doing or whatever. And I know that best excuse for not producing a record is that you don't have it or that you're not required to keep it. But still there's that threat of court, you know, that they're going to take you to court with an order to show cause and you don't want to get held in contempt. If you contest that, you're going to be accused of being a tax rebel. And you're going to——

Senator **Abdnor**. What have you done, just ignored it?

Mr. **Farris**. Pardon me?

Senator **Abdnor**. You say you've ignored it, then?

Mr. **Farris**. The summons?

Senator **Abdnor**. Yes.

Mr. **Farris**. No, I didn't ignore it. I wrote the guy—I didn't show up. I wrote the guy a letter, and the agent who issued it and I told him that I wasn't coming. And I told him why. And I told him that I thought the letter was an appearance within the meaning of *Reisman* v. *Kaplan*. So I think that I did make an appearance. And I've seen him a couple of times around town since then, and I've asked him, you know, what's going to happen on it. And he said he didn't—you know, he didn't know yet. So I don't know what the half-life of one of those summons is, but I hope it isn't very long. But that was issued in 1979 for the years 1977—they wanted books and records for 1977-78.

And at the time I filed that return where I claimed the fifth amendment there weren't really any guide lines to tell field personnel or service center personnel what a tax rebel was or what the IRS calls an illegal tax protestor. In 1979 they came out with a manual supplement telling field personnel what an illegal tax protestor was and they've got about nine definitions in that thing. I don't meet any of those definitions, even though I claimed the fifth on that one return, because my claim of the privilege did not reduce what otherwise would have been my tax liability. But yet, I think they classified me as an illegal tax protestor. And I think that's why they turned this $48 into $4,800. There's no other—I can't think of any other justification.

Senator **Abdnor**. Well, we'll move right along then.

THREATENED PROPERTY SEIZURES

Mr. **Farris**. OK. I have one other thing to say about some seizures. They've threatened to seize property if I don't satisfy what they want for 1978-79, which I'm not sure what it really is. But I went and looked at their seizure authority, and I suppose they have it, but I think they're all out of sequence with it. As I read that, you've got 100 days to come up with the money after you get a judgement of liability from a jury. I think the operative word in that statute is "liable," and I think that they misconstrue that and I think they've talked the courts into misconstruing that. When Congress said liable I don't think they're talking about, you know, some figment of the idea sphere. I think they're talking about practical, actual concrete liability, not a theoretical liability in law, but a liability in fact. I think that's a determination for a jury. And so I think that before the IRS has a right to seize your property they have to have a determination of liability from a jury and then you've got—if they get one, then you've got 100 days to come up with the money. It's unreasonable to think that people can come up—to satisfy a tax judgement in 10 days, which they claim that you have to do.

I don't care, you know, if you're a millionaire, you might not be able to, you know, turn your assets into cash in 10 days. So I don't think Congress—you know, I don't see how Congress could be that unreasonable about it. And why can't a taxpayer have enought time to satisfy a tax judgement in a reasonable amount of time. Because if you lose, you know, you could be talking about quite a bit of money. I don't see how it can be reasonably—they can reasonably say that you've only got 10 days to come up with some money to satisfy a tax judgment. You've got to have more time than that. I don't care how little or how much money you have. I think—what I'm going to suggest to this committee is that you not given them any more—as you appropriate money that you stipulate or instruct in the appropriations that seizures not be made except based on a finding of liability by a jury and only after they wait 100 days after that judgment.

If you're going to fine people—if you're going to try to claim that you have the power to take money from people under the guise of taxation, then you ought to at least be reasonable enough about to give them some time to come up with the money. And let an impartial tribunal decide, you know, whether or not somebody actually owes the tax.

Because the reason people fight the IRS is because of things just like this, because they turn $48 into $4,800. And if you have the audacity to question them about what they do, you're a rotten tax rebel; you're a threat to the country.

Senator **Abdnor**. In accordance with your suggestion, I don't think our committee, the Appropriations Committee, would be writing legislation. And that's—I remind us, there's quite a difference between the appropriating and authorizing committees. But it's certainly a point that's going to be part of the record and will be——

Mr. **Farris**. OK. My understanding was that you could specify what an appropriation could or could not be used for.

Senator **Abdnor**. Well, I—don't you have to follow a——

Senator **Stevens**. We can put limitations on the use of it. We can't rewrite the tax laws.

Mr. **Farris**. OK. Well, that doesn't stop their seizure power. If just tells then how to do it. I really can't say that you're supposed to have 100 days. That really seems like it's stretching it, but I can't believe that you cannot have your liability determined by an impartial tribunal. The IRS is prosecuting a lot of people now, a lot of pretty small taxpayers, and they're winning an awful lot of cases. And they're going right in there and they're putting your income up on the board and the jury is buying that. So I don't think that they can say that the jury is going to, you know, not be partial about it. I think that they're being pretty impartial about it, and I think that what we need to slow the IRS down is an impartial determination of liability.

Senator **Abdnor**. Well, we appreciate that. I'm not trying to rush you along, but we do have quite a list here. This has all been made part of the record and we do have—you are going to bring—present those papers, I guess.

Mr. **Farris**. Right.

Senator **Abdnor**. I think our next witness is Dr. James Lundquist. Welcome to the committee, Dr. Lundquist. You just may proceed in any way you wish.

STATEMENT OF DR. JAMES LUNDQUIST

CASHING OF STATE CHECK BY FEDERAL IRS

Dr. **Lundquist**. My problems with the Internal Revenue Service are mixed and not all constitute harassment, by any means. Some are minor compared with those of other people.

A peculiar problem occurred in 1959, this goes back a long distance of course, in which two checks, one to the State of Alaska and one to the U.S. Government, Internal Revenue Service, stuck together, were placed in an envelope together in error by my secretary. Both checks were cashed by the government. The one to the State of Alaska, which was in the amount of $500, was never credited to my tax account. And when this was pointed out to the Internal Revenue Service, they said they needed to see a copy of the cancelled check. That was brought to them. Then they said the copy wasn't good enough, they wanted to see the original canceled check. And that, again, was brought showing that it was paid to the U.S. Government, and yet made out to the State of Alaska. Then they decided that that wasn't sufficient, that they had to have the original check in order to follow through on it, and a receipt was issued for that check. Then the next notice was that they had lost the original check and since I didn't have an original check to show, the case was closed.

And that—you know, it gives one a little bit of a bad feeling, and a feeling that there is a dishonesty in the entire system. And to some extent that feeling that the system, itself, is dishonest, not necessarily the individuals working in it, continues.

Senator **Stevens**. Have you got that correspondence still, Jim?

Dr. **Lundquist**. I don't think so, because I think all of that went with the flood. So I think that we have nothing on that at all.

Senator **Murkowski**. Did you get a credit back for the $500 that was——

Dr. **Lundquist**. No; there was never a credit.

Senator **Murkowski**. So it was cashed and you didn't file a claim to the State of Alaska for a new check or—which you might have been able to pursue that, but I question——

Dr. **Lundquist**. We did pursue it then, at that time, and we did pay the State of Alaska the $500 that was due then with another check, and so forth. But the Internal Revenue Service, having cashed a check made out to the State of Alaska, never credited anybody with it so far as we know.

But the handling of the situation is more important than the *money. Because they, essentially,* refused to accept a copy of the check, had to have the original, then lost the original, and then claimed because we didn't have the original check obviously we had no claim against them.

The next episode of problem with the Internal Revenue Service in my experience was started in the 1974 tax year. It was a year in which I withdrew from a partnership and for the remainder of 1974–76 tax years was still listed by the Internal Revenue Service as being a member of that partnership, even though I had had no income from the partnership, nor any participation in any decisions within that partnership. No executive position, but merely working on a salary basis. That amounted to $82,000 over 3 tax years, which I had to borrow from the Alaska National Bank and I'm still paying off, for income tax on money that obviously was never received. And I think this is a peculiarity of the law and has nothing to do with an individual being harassed by the Internal Revenue Service. But it certainly created a significant financial problem which continues to this date, because, essentially, Internal Revenue Service was unwilling to listen to the idea that I had absolutely no participation in that partnership during those tax years.

Senator **Murkowski**. Did you get partnership income during those tax years?

Dr. **Lundquist**. None.

Senator **Murkowski**. None.

Dr. **Lundquist**. None.

Senator **Murkowski**. On what basis was the refusal of the Internal Revenue system to recognize that you received no consideration?

Dr. **Lundquist**. The basis was that they had not received from the partnership any indication—I don't know that that's necessary by law, but they had not received from the partnership any indication that I was no longer a member of that partnership, even though, actually legally and financially otherwise I was not. And they said that if I did have and argument then I could take it to a civil court and sue the remaining partners for the amount of money that had been paid perhaps unnecessarily in taxes. But it is a significant amount of money and I think probably the Internal Revenue Service was adhering to letter of law. But certainly creating a significant hardship and collecting taxes on money that, obviously, had never been paid; paid to me.

IRS AUDITS

The problems with possible harassment have occurred in the last tax years with repeated audits. And yet very little change, if any, being made in the amount of tax liability.

Senator **Abdnor**. Did anyone research this for you as to the law or are you just assuming that?

Dr. **Lundquist**. Yes; and I have an attorney working on it now to develop a civil case against the former partners to try to collect the money.

Senator **Abdnor**. But I mean the tax part of it. You felt that the tax law brought this on, the IRS trying to assess you for the extra income. I'm not that familiar, I guess, with that portion of the law.

Dr. **Lundquist**. I was told by the local director of the Internal Revenue Service here in Fairbanks and by tax attorneys and others that this was permissible under the Internal Revenue Service rulings and, apparently, law. That if Internal Revenue Service decided, rightly or wrongly, that I was a member of that partnership, even though I was not in acutality, that I would still be liable for that tax burden. As I recall, that amounted to $82,000 over 3 tax years and that's a whopping amount of money, especially when there is no income to offset it.

Senator **Abdnor**. I agree.

Dr. **Lundquist**. And that's a debt that I continue to pay. The more recent problems are simply ones of repeated audit. In the 8 tax years prior to the 1980 tax year I have been audited six times.

Senator **Murkowski**. Six times in how many years?

Dr. **Lundquist**. Out of 8 tax years. The audits never amount to anything. I believe that in one of them I had a tax liability decided at $187. Most of them there was no change in taxes and for the tax year 1979 the IRS owed me $217 which they did pay, yet there's a repeated request for audit. And now, the latest is that the 1978 tax year is being audited again, after I had thought that that was all decided and closed, on the basis that a partnership involving the office building in which I work and of which I am part owner should be reaudited. The argument is that the building has a useful life of 80 years.

Senator **Murkowski**. Eighty?

Dr. **Lundquist**. So the accountant tells me; yes. That is the argument on the part of the Internal Revenue Service.

Senator **Murkowski**. Eighty years?

Dr. **Lundquist**. Yes. that the Internal Revenue Service wishes to extend the useful life of the building for 80 years.

Senator **Murkowski**. You don't have anything written to that effect?

Dr. **Lundquist**. I do not. I can secure it.

Senator **Murkowski**. I think it would be appropriate for the record, Mr. Chairman, If you have something written from IRS that indicates an 80-year depreciation on real estate.

Senator **Abdnor**. I agree.

RECEIPT OF WAIVER FORM

Dr. **Lundquist**. That is just starting its arguments. To reopen the 1978 tax year I did receive a waiver form to sign and return. I do not have a copy of that waiver. It was, after signing, turned into the Internal Revenue Service. The waiver essentially stated that if I wished to present any argument concerning the decisions made for that tax year that was being reaudited that I should sign the waiver. Implying, then, that if I did not sign the waiver that I had no means of presenting any argument at all, but would have to accept the decision made by IRS whatever it was. That was signed and—signed on the recommendation of my attorney and the accountant who handles my affairs. And I really have no objection to that except that the implication is, of course, that either you sign the waiver or else.

Senator **STEVENS**. There seems to be a one-way street there, too. We heard testimony about these waivers and yet they're very quick to shut off any possible claim for refund at the end of the 5 years. I just don't see that we can have this one-way street for the Government. I'd like to see that form. And I hope the IRS is going to be prepared to explain that form to us, either here or in Washington, because I'm coming to the conclusion, Jim, that it's totally a one-way street up here in terms of the way these laws have been enforced.

Dr. **LUNDQUIST**. Well, I believe it is too. And certainly the Internal Revenue Service has rules, regulations, court decisions that are often conflicting, and in picking and choosing among them can always find one in its favor to the disadvantage of the taxpayer. It really seems, entirely, a one-way street.

The auditors, individually, in each year that I have been audited have certainly been excellent. Obviously pleasant, obviously knowing their jobs, obviously very easy to deal with, and I certainly find no fault with any of the individuals involved. But it appears that the problems are really built into the system and that there must be some harassment to have a person audited year after year with no significant change in tax liability being found in most years, if not all. The average is zero change over the years.

And I have been told by my colleagues in the practice of medicine that the majority of them, too, are audited year after year. And it does appear from other information that I get, from the accountant, for example, that almost all of the physicians are audited, almost as though there were a campaign against this particular group of people. Perhaps this is the decade of harassing physicians. Perhaps next decade it will be attorneys or someone else.

Senator **ABDNOR**. What year was the $500 check mishandled?

Dr. **LUNDQUIST**. That was actually long ago. That was 1959.

Senator **ABDNOR**. I see. But that may have led to some of the six out of the eight——

Dr. **LUNDQUIST**. But it was just something that gave the impression of dishonesty on their part. It was a very unpleasant relationship. Nobody would listen and finally on getting all the necessary papers they conveniently lost them, so that they wouldn't have to argue further.

Senator **ABDNOR**. Well, we certainly appreciate the information, and, believe me, it's helpful and I think it's good for the assistant commissioner to hear too, being present for this. We thank you very, very much.

Dr. **LUNDQUIST**. I thank you.

Senator **MURKOWSKI**. I'm sure your're going to get an explanation as to why you were levied for taxes, whether it's satisfactory or not is something else. But I just can't understand on what basis, Doctor, they would justify levying a tax without you having received the benefit of the income or your corporation or at least had some consideration directly to yourself to offset that tax.

Dr. **LUNDQUIST**. Apparently it was just a matter of law, that that's the way the law reads and there was no choice.

Senator **MURKOWSKI**. Maybe we'll get an explanation.

Senator STEVENS. We'll get an explanation. I agree, but if—it should be a matter of fact when you're in a partnership and when you're not. The other partners ought to be able to agree you're not in the partnership.

Dr. LUNDQUIST. Yes. And they did agree and it was——

Senator MURKOWSKI. And you were not in the partnership?

Dr. LUNDQUIST. I was not in the partnership in any sense. Neither in any administrative function nor receiving any money from the partnership.

Senator STEVENS. I think that we will pursue that one. Thank you.

Senator ABDNOR. Thank you, Doctor Lundquist.

Senator MURKOWSKI. Appreciate your testimony, Jim.

STATEMENT OF PALMER PETERSON

COMPLIMENTS ON IRS PRACTICES

Senator ABDNOR. Palmer Peterson. Is Mr Peterson here? Mr. Peterson, do you have a statement, a written——

Mr. PETERSON. No, I don't. I've lived in Alaska since 1964 and I've been audited three times. This panel is set up to air grievances, but I don't have any. I feel that I've been treated fairly each time, and they're just doing their work. I don't know. I guess this is the wrong place to be. You're supposed to air grievances, but——

Senator ABDNOR. Well, we're not here just, you know—we've had some complaints and so we decided to come up here and hold hearings, but we're glad to hear you say that you feel that you've been treated very fairly and squarely, so it's good to hear the other side.

Mr. PETERSON. In Alaska, why, we don't heard very much about this, but since I come up in 1964 I've read two articles on the role that the Federal Government plays in Alaska. It took 10 years to get the first one and it told, if I remember right, in 1968 the Federal Government spent $858 million and since then they're gone up 20 percent a year, so that's a tremendous increase and it doesn't matter what walk of life you're in, you benefit by it. And there's very little publication of that.

When I read that we get audited more than the national average and property seizures, why, I just assumed that that was to be expected, you know, because us and Hawaii are the biggest beneficiaries of the Federal dollar of any State in the Union.

Another thought that—in the working place when I run into people that are tax protestors, I want to wish them luck, because—1 week ago I made a statement to a friend of mine that Ronald Reagan will put more people in jail in connection with this air traffic controllers strike than the Republic of Poland, so I think they'll need the luck. That's all I have.

Senator ABDNOR. Well, thank you. Thank you, Mr. Peterson. We're glad to have the other side of it I assure you. We're not out here just to make trouble.

Kathy Goforth. Kathy, you have a statement to give?

KATHY GOFORTH. Yes.

Senator ABDNOR. Yes, if we could, we'll put the whole—well, Kathy, you go right ahead as you see—any way you wish here. The only thing we have is, time restriction here.

STATEMENT OF KATHY GOFORTH

POWERS GIVEN TO IRS

Ms. **Goforth**. All right. I have never been personally harassed or abused by the IRS. I do consider IRS activities one of those for whom the bell tolls situations. I understand that I am not speaking to those who alone make the tax laws, but I know I am speaking to those who are on speaking terms with those who do.

If nothing else, you all are certainly in the position to cut off the cash to your ruly children. It has come to your attention, I understand, in some rather lively ways since you've been here that the IRS has raised the ire of the body politic in Alaska. And I think the basic problem is that the Government and, particularly, the IRS consider all money to be their money.

We give out taxes to support a Government which is to represent our desires. That we are considered by the IRS thieves of our own money, and that our desires that this situation be controlled are not truly represented by our Federal legislative branch is intolerable.

You may be a little concerned to have found yourselves surrounded by Samuel Adamses and Madame DeFarges during your stay here. It's because our elected officials have chosen to give extraordinary powers to the IRS, and these powers are, to the great majority of the people, as objectionable as would be unwarranted taxes.

We are asking, in the matter of the IRS, to have from you that true representation which was one of the basic reasons for the founding of this Federal Republic.

The bitterness toward the tax system will not be alleviated unless Congress is willing to do three, rather basic, things. The first is, that it is imperative that the powers and systems which now exist be, not necessarily, changed, but certainly changeable. Equity in the collection of taxation is a reasonable and obtainable expectation of the American people which must be, and can be, fulfilled. That it will require enormous work and courage on the part of Congress is without doubt, but I think that work and courage is something that we have come to expect.

Second, the extraordinary powers of the IRS must be sharply curtailed. That the IRS may consider any citizen guilty of any offense whatsoever unless he proves himself innocent is an offense to the judicial system of this country.

Third, the mantle and crown of King George must be removed from the IRS, both in attitude and in activity. It is a marvel of the world that our form of government is so great that it works in spite of all our faults and all our frailties. It would be so much easier for us as a people to support the Government with full hearts if the IRS were controlled.

We must all understand that this agency must not consider any Americans, but particularly Alaskans, to be a great unlettered, unwashed mass of tax dodgers. We pay, as we must. If it is slowly, it is surely not so slowly as the Government moves to represent the desire and best interest of Americans and Alaskans in the matter of controlling the IRS's behavior.

Senator **Abdnor**. Thank you. Would anyone care to——

Senator **Murkowski**. Very nice statement.

Senator **Abdnor**. Yes. We appreciate it very much.

Is Mr. Alton Ashcraft present? John Sheridan? Mr. Merlyn Schuster?

Hi. How are you, sir. Thank you. Mr. Schuster, we have your statement and it will be placed in the record. You go right ahead and—however you want to present your case.

STATEMENT OF MERLYN SCHUSTER

CASES TRIED ON IRS HOME COURT

Mr. **Schuster**. I didn't mean for it to be so lengthy, but I was informed yesterday to expect some kind of a statement, and so I pulled this together last night.

Senator **Abdnor**. Yes, we we normally require that and they do in official hearings in Washington. We've been quite lenient on it here, but it's much better to have a prepared statement for the record and then go from there, but you—it's working out fine.

Mr. **Schuster**. Sure. I was audited in 1972, but I became firmly convinced that Internal Revenue Service, the way it's set up right now with the burden of proof shifting to the defendant, is a very unequal contest. That the Internal Revenue Service sits in judgment of the proof that you offer and subjectively determine whether to accept or reject it, and I think that's been the thread of what Dr. Lundquist said and so far on down the line.

There's no judicial reprieve from this. You have to work within the tax structure itself. A number of times I asked to have the case switched out of the tax structure into the Federal district court or some judicial body, some judicial alternative, and I was denied. To me it's analogous to trying to prosecute a malpractice suit and work completely within the AMA while you're doing it, or to prosecute an attorney, a malpractice suit against an attorney, and work totally within the ABA. You're constantly playing on the home court.

TRAVEL ALLOWANCE

Now, an example in point, when I was audited I was teaching at the time. I had traveled to Alaska in 1972. The school system that I was teaching in you had to go to summer school once every 4 years, and after you attended school, summer school, 4 years, you were entitled to travel for one block assignment for credit.

Well, I had attended the University of Wisconsin, Madison, for six consecutive summers and I finally took a break and I thought I will come to Alaska and I'm going to use that for my block assignment. Well, I deducted the expenses for the trip up. I did not deduct for shelter, because I pulled my trailer and I never submitted that. I did submit for meals.

When I was audited in 1974 the first thing the auditor asked was, "How far is it from Wisconsin to Anchorage?" And I said I had checked the speedometer when I left Wisconsin and I checked again when I got to Anchorage and it was 3,900 miles. She disagreed. She said, "I'm from Iowa and I don't think it's that far." I asked—I said, "What do you get when you drive that distance?" She says, "I don't. I fly." Then after we had worked that over she said, "Well, what proof do you have to prove that you, in fact, did drive to Alaska and you did not take a plane?" I never did quite understand, that, because both were deductible. However I said, "If it's really necessary I will write to the oil companies, because I did charge in Dawson City; I did charge in Fort St. John; Fort Nelson; and I did charge in Whitehorse." And I said, "If it's necessary I'll get those slips and that will certainly demonstrate that I came up the Alcan Highway." Well, then we went one step further, that this actually would not prove anything, because what proof did I have that I did not pick up a hitchhiker who shared expenses or paid all my expenses in return for the ride up here. Well, you see, when the burden of proof is on you—all the sudden it became apparent this is futile, you know. No matter what I offer it's going to be—go one step further, it's going to be turned down. And with the burden of proof upon me—it's exasperating to be very frank about it.

After this had been exhausted we left that and went to another one. Was I a better teacher because of the trip and what did I have to support this? Did I take slides and pictures to show the students upon my return? I'm teaching seniors in high school and they don't particularly enjoy seeing slides of your travels. Did I tape any conversations of people I had talked to? No, I had not. As the interview came to a close I was told that I had not satisfied both requirements of the following to be eligible for the educational deduction:

> You may deduct the ordinary and necessary expenses of education which: meets the express requirements of your employer, or requirements of law or regulations for keeping your salary, status, or employment, if the requirements imposed serve a bona fide business purpose; or maintains or improves skills required in performing the duties of your present employment or other trade.

Now, I felt I had satisfied both of them. I surely had satisfied one. The individual said no, I had to satisfy both. And I said I had never known of "or" to be construed to be synonymous to "and." And that led nowhere. I submitted a letter that I received from the board of education and from the superintendent of schools who had accepted my travel for block assignment. He thought it had educational merit, and he agreed that it was worth three credits. I submitted this letter for the tax department for consideration. The individual angrily threw it on his desk and said, "You have no proof. All you have is a piece of paper." This left me flabbergasted. I don't know what you would need in the way of proof. Again, I asked to have it transferred out of the tax structure. It was denied.

A lady was brought up from Anchorage and went over it again. The end result was the same. And this dragged on for 1974-76.

In 1976 I had a refund coming of a substantial amount, and the amount that I owed them was deducted before it reached me. And so, consequently case closed unless I wanted to initiate suit against the Internal Revenue Service, which I did not at that point. I'm exhausted.

LEGAL RESTRAINTS SUGGESTED FOR IRS

So I guess the thing that I really came out of this with when I was all done was that with the burden of proof upon you and the Internal Revenue Service sits in judgment and they are the determining factor. They're the final arbiters that determine whether they're going to accept your evidence or not. I think Mr. Lundquist has indicated this, the copy of the check was not adequate. But they are the ones who make the determination. All I'm asking is for a judicial alternative that you can get out of the tax structure. I gladly would pay any amount that a true—truly judicial body would assess. But you're always playing on the home court. Everything has to be done within the Internal Revenue Service, itself. And I feel that's improper. Especially when the burden of proof is upon the individual. I think every time in history when the burden of proof has been on the individual and not the State that the individual suffers. It's been disastrous. I mean, history definitely bears this out. And I think that's why we switched it over to the principle that the burden of proof must be on the State and not upon the individual. And if it's going—and I can understand that the Internal Revenue Service would have a very difficult time if the burden of proof was upon them rather than upon the individual. As a matter of fact, it's not even workable.

But I do feel that there should be some legal restraints, some legal guidelines, to—the Internal Revenue Service, at the present time, seems to be autonomous. It's an entity into itself. It's a legislative body; it's a judicial body; it's an executive body, self-contained. And I don't think there's legal restraints to control it, and I think it's increasing. Thank you.

Senator ABDNOR. Thank you. Thank you, Mr. Schuster. Does anyone have any questions?

Senator STEVENS. You came back here, obviously, and had this conversation in the Fairbanks Office, is my understanding?

Mr. SCHUSTER. Yes. Down here on—it was down on Second Avenue here. Yes.

Senator STEVENS. I don't have any further questions.

Senator MURKOWSKI. The entire amount in question is $1,600?

Mr. SCHUSTER. That's the amount of expenses I submitted for 2½ months, which I though was a fair figure.

Senator MURKOWSKI. And they have disallowed all of it?

Mr. SCHUSTER. All of it, yes.

Senator MURKOWSKI. You're teaching in Fairbanks?

Mr. SCHUSTER. No. I was teaching in Wisconsin at the time.

Senator MURKOWSKI. You were teaching in Wisconsin at the time and you went to Alaska?

BLOCK ASSIGNMENT IN ALASKA

Mr. SCHUSTER. Yes. I came to Alaska here for a block assignment in lieu of going to the University of Wisconsin for another summer.

Senator MURKOWSKI. And was Wisconsin your home?

Mr. SCHUSTER. I guess as much as anyplace.

Senator MURKOWSKI. So did the IRS contest the fact you were going back to your home and you could have gone to school here, say, and gotten your three credits to meet the requirement, was that——

Mr. SCHUSTER. They brought that up, but that makes an expensive venture, then, to travel to Alaska to attend a summer school up here and then to return. In the lower 48 you can do that, because they're contiguous, but this is quite expensive to travel all the way up here for a summer school. The education——

Senator **Murkowski**. You were here already?

Mr. **Schuster**. No. No. No, I traveled—I left at the end of the school term from Wisconsin, Eau Claire, Wis., and I drove to Alaska, and I returned just in time to start the fall term again back in Wisconsin.

Senator **Stevens**. Did you, in fact, teach back there that fall term?

Mr. **Schuster**. Yes. I went back and taught 1 more year.

Senator **Abdnor**. When you were credited—given 3 hours credit by some crediting agency?

Mr. **Schuster**. By the superintendent of schools; yes.

Senator **Abdnor**. That's on your record? I mean, that counts as though it had come out of a college? It's been certified?

Mr. **Schuster**. Yes.

Senator **Murkowski**. What did you do in Alaska during this time you came up here?

Mr. **Schuster**. This is where it kind of bogged down. One, at the time that I came up here there were summer—the amount of news about Alaska was very limited in 1971-72. In 1972 it broke in the newspapers down there that was some segments of elements in Alaska that were thinking of secession. And it certainly indicates that there's some certain amount of, oh, friction or disharmony here in the State of Alaska. So, one, I was coming up to see how widespread it was. It's not a large goal, but it's something to investigate, just to feel or—feel out and see how many people really feel this way, that Alaska should secede from the Union and that was in 1972.

And also, the other thing was to—how had Natives adapted to the urban lifestyle in the cities, which is observable in Fairbanks, Anchorage, other municipalities—to make the transition. And this was not meant to be an in-depth study. This would be a very superficial thing, because that was not the intent. The intent was to show that something had been accomplished during the course of the summer. What I actually got out of it the most was the fact that I had been up here for 2½ months and there's nothing that—I came up here with the idea in mind that Anchorage was going to have mud streets, believe it or not, and I had a master's degree. That's how naive I was.

Senator **Murkowski**. Did you contract for employment up here?

Mr. **Schuster**. Pardon?

Senator **Murkowski**. Did you contract for employment to make these studies?

Mr. **Schuster**; No, I did not.

Senator **Murkowski**. You left Wisconsin, came up and made your observations and then went back and charged your transportation back home to get your three credits as a deduction? You felt that was a legitimate deduction?

Mr. **Schuster**. That's correct; yes. It was an educational expense.

Senator **Abdnor**. Well, if you would have gone to college and picked up three, you wouldn't have been able to take it off?

Mr. **Schuster**. Yes. Oh, yes.

Senator **Murkowski**. Yes; but not a trip to Alaska.

Mr. SCHUSTER. No. Well, no, no——

Senator STEVENS. Didn't the fact that your school—it was a requirement that you do something that summer to get credits as a prerequiste to teaching for another year there; wasn't it?

Mr. SCHUSTER. Yes.

Senator STEVENS. And the school accepted the trip as being the equivalent of the 3 years—the three credits?

Mr. SCHUSTER. That's correct.

Senator MURKOWSKI. Did you have to submit a paper to the school to get the three credits?

Mr. SCHUSTER. Yes; I submitted a paper to the superintendent of schools and to the board of education and they, in agreement—there's a copy of the letter on the back here, the last page.

Senator MURKOWSKI. I saw that letter. Well, what was your paper on?

Mr. SCHUSTER. On the—how widespread was the sentiment for secession and the second item was native adaptation to the urban lifestyles, had they made the transition smoothly or not or what was the status of—no one knew about it at that time. And I suspect that, perhaps, we don't know much more down there right now. I've been up here for 9 years now; 8 years.

Senator STEVENS. Well, from that point of view, we'll look into it. I don't see why the IRS should go behind the certification of the institution that you meet the requirements of their system, and had a form of continuing education. We have young people come and work on our staffs and they get credit from their institution for having completed a half semester or semester, whatever it might be, and it is the equivalent of education. I think that that's a matter for the institution to decide and not the IRS to decide, but—we will look into that.

Mr. SCHUSTER. OK. That point did come up, by the way. The person who was in charge of the office here in Fairbanks said, "I don't think that has educational value." I said, "Here's a person who has a Ph. D. in education, a doctorate in education, he seems to think so." And he says, "Well, I don't and I'm not going to allow it." And again, what can you do? There is no recourse, no redress.

Senator ABDNOR. Well, thank you.

PREPARED STATEMENT

Senator STEVENS. Thank you very much. We will insert your prepared statement in the record at this point.

[The information follows:]

MERLYN SCHUSTER: 1974-1976 audit of 1972
Tax Return

Background:

As a teacher, I traveled to Alaska from Wisconsin in 1972 to satisfy an educational requirement. Upon my return to the school system, I submitted a paper to the Superintendent of Schools, and the Board of Education to determine if I had satisfied the educational requirement. They agreed that I had done justice to the subject in light of the fact that I had no background, limited funds, and limited time. I spent 2½ months from the time I left Wisconsin until my return. The total expenses for the 2½ months, 11,000 miles of travel, shelter, and food was 1,600.00 dollars. The subjects being pursued were (1) A study of the Alaskan reaction to statehood and towards the lower United States, and (2) A study of native adjustment to urban life styles.

In 1974 I was audited and the expense was disallowed. I was asked to prove the following:

(1) Distance from Wisconsin to Anchorage, Alaska was indeed 3,900 miles.
(2) That I had in fact driven to Alaska and had not flown.
(3) That I did not pick up a hitch-hiker who shared or paid all expenses in return for the ride.

After this had been exhausted, the next challenge included the following:

(1) How was I a better teacher because of the trip?
(2) Did I take slides and pictures to show the students upon my return? (Good Heavens !! I was teaching high school seniors, and the most positive way to lose a class is to threaten them with slides of your travels.)
(3) Did I tape any of the conversations that I had had with people.
(4) Had I spent any time in recreational pursuits such as fishing etc?

As the interview came to a close I was told that I had not satisfied both requirements of the following to be eligible for the educational deduction:

> "You may deduct the ordinary and necessary expenses of education which: meets the express requirements of your employer, or requirements of law or regulations for keeping your salary, status, or employment, if the requirements imposed serve a bona fide business purpose; OR maintains or improves skills required in performing the duties of your present employment or other trade."

I pointed out that I felt that I had satisfied both, however, without question I had satisfied the first condition, and in all my experience as an English minor I could not recall a single instance whereby "or" could be construed to be synonomous with "and". I submitted the letter of approval and acceptance from the Superintendent of Schools for their consideration. The supervisor of the Fairbanks tax office angrily threw it on his desk, and informed me that, "You have no proof! All you have is a piece of paper!"

At this point it became apparent that it was futile to continue. I asked to have the case transferred to the Federal District Court. I was denied, but given a conference with a Jeane Stark from Anchorage instead. After a fruitless session, I again requested to have the case transferred to the Federal District Court for a final determination, but I was informed that I would have to pay the assessment first, and then initiate a suit against the tax department. I wanted to get the case out of the tax structure onto a "neutral floor" for an impartial and final consideration.

In the final analysis, it dragged on from 1974-1976, and was resolved when I had a refund coming adequate to cover the assessment plus interest and penalties. This was promptly diverted, and converted, at which time I was too tired to pursue the matter any further.

Now that it is all history, I am left with the inescapable conclusion that when the burden of proof shifts from the state to the defendant, it is subject to very real and very grave abuses! Recorded history is a chronicle of the abuses inherent in such systems. Realizing that the individual bearing the burden of proof could never be an equal to the state with the vast resources it could marshal, the effort was made to attain some semblance of parity, and the burden of proof was placed upon the state. Although not perfect, it certainly is the best system we have today.

In conclusion I feel the following:

(1) The IRS is an appendage of the executive branch, with quasi-legislative and quasi-judicial powers, but the legislative and judicial aspects are becoming less "quasi" with eachpassing day.

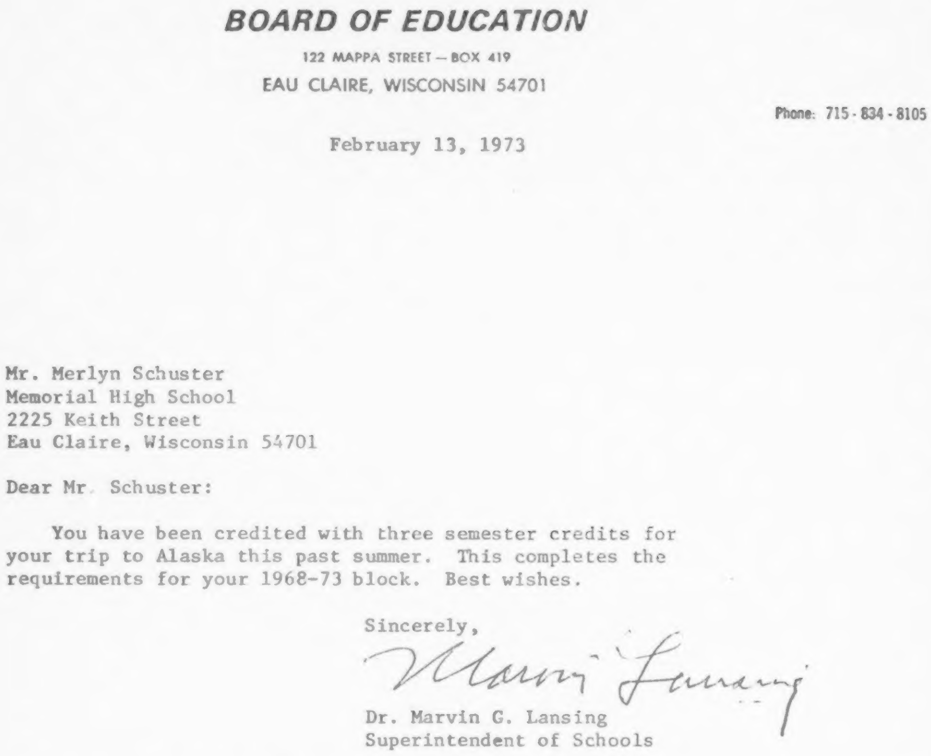
(2) It arbitrarily interprets its own code as evidenced by the wide disparity of opinions of the people applying them, e.g., the reminder that regardless of what advice an IRS agent may give to you--if you are in error, you alone are responsible for the error, penalties, and interest.

(3) I believe that in the advisory stage the IRS does try to be fair and helpful, even if ill-informed at times. However, in the auditing stage it immediately becomes an adversary system--move and counter-move! I think I illustrated that on previous page.

(4) This is an opinion based upon observation and the reliable testimony of an agent. It is inevitable that promotion within the ranks must be linked to the recovery rate. If this be true, we then have a very dangerous situation developing:

   a) The burden of proof is upon the defendant
   b) The IRS is the final arbiter or judge of the credibility of the proof.
   c) Recovery is a prime consideration
   d) Very limited legal restraints
   e) There appears to be no avenue for redress of of grievances except within the taxing unit itself. I think I am speaking for a large number of people when I say we are asking for a truly judicial alternative without exhausting all internal tax remedies. I do not think that any organization can objectively sit in judgement of issues in which their own interest are involved.
   f) It is a governmental entity unto itself. It legislates by arbitrarily interpreting the law to accomplish its own desired goals; it executes the laws; and adjudicates. It determines the innoncence or guilt contingent upon the proof that the individual is able to submit.

Thank you for the hearing.



BOARD OF EDUCATION
122 MAPPA STREET — BOX 419
EAU CLAIRE, WISCONSIN 54701
Phone: 715 - 834 - 8105

February 13, 1973

Mr. Merlyn Schuster
Memorial High School
2225 Keith Street
Eau Claire, Wisconsin 54701

Dear Mr. Schuster:

You have been credited with three semester credits for your trip to Alaska this past summer. This completes the requirements for your 1968-73 block. Best wishes.

Sincerely,

Marvin Lansing

Dr. Marvin G. Lansing
Superintendent of Schools

STATEMENT OF BOBBY MANTOYA

Senator ABDNOR. Bobby Mantoya. Do you have a statement, a written statement, Mr. Mantoya?

Mr. MANTOYA. Yes, sir. No; I have no paper.

Senator ABDNOR. Oh, all right. Go right ahead.

Mr. MANTOYA. I've been very busy working, so I haven't had time to get it. Anyway, in 1978 I was audited. I've been here since about 1976—1975. I got audited in 1978 and they claimed that I owed them $45,000 plus interest and penalties, and me and my wife that year, I think, paid $44,000 and they said I owed $45,000 in taxes. Well, when I went down to see them about them, they told me that I had—I was working in a band at the time, and I called myself Bobby Dee and the band was called General Delivery. Well, I paid them a check out of everything that we got. It was contract labor as well as—I was contracted by the club.

Senator ABDNOR. What kind of work—pardon me, but——

Mr. MANTOYA. Music.

Senator ABDNOR. Oh, pardon me, I'm sorry.

Mr. MANTOYA. OK. And they told me that they couldn't allow me to claim the checks that I wrote out to the band, which came to about $50,000 or $60,000, whatever it was. And I had all my checks and the lady down there told me that she wouldn't allow me to claim my checks that I wrote to the band. That I am responsible for all their taxes and there was five or six different entertainers involved in it. Anyways, when I went back—she sent me some more letters saying they was auditing me for 1976-1980 and really sticking it to me, so—I don't—I'm not a very educated man. I didn't go through high school. So I didn't get no lawyer or nothing, but I had all my taxes done by Moore Associates, I give them all my receipts. Well, the lady told me that I had to bring all my receipts, this is about 6 months after the initial contact with me. She says to bring every receipt that I've got, all my receipts for—all my records. So I brought all my check stubs, my check receipts, every receipt that I have—that I've made since about 1976, every individual little receipt of everything I did for all my tax years.

Well, they contacted me again here a year ago and said they needed some more, that I hadn't, you know, brought them into them. Well, I gave them everything I had, I told them. And they says, well, evidently, so and so was taking care of the case, then it was transferred to somebody else and this is about the third or fourth person that's been doing my case in the last 2 years. And I still got letters from them saying they can't find it. They said evidently I didn't give it to them. And I give them all my tax records, and they keep insisting that I come up with more receipts, duplicate receipts, which I cannot do, because I gave them everything I had. I brought them two big, whole bags of it about 1½ years ago.

COURT CASE IN ALASKA

Well, I got letters now saying I got to go to Alaska to go to court on this whole affair. And I talked to Mr. Tom McCarthy the other day, he says that if I can't come up with duplicates of what I said I gave them, which I know I gave them, that I was going to be charged for the whole amount of everything. They got all my check stubs and everything; my check receipts for 3 or 4 years, and—I don't know. When I make $44,000 a year and they want to charge me $45,000 income tax, Federal, I don't know what to do.

Senator **STEVENS**. What's that notice you've got in your hand there?

Mr. **MANTOYA**. I don't understand, sir. I think it says me and my wife's got to come down there, to Anchorage. I just got that today after I've made an appointment here. My wife's got one too. She ain't opened it yet. I imagine it's the same thing.

Senator **STEVENS**. While he's looking at that, you—let me get this straight. You took in, grossed—you paid $44,000 and they want you to pay $45,000 more?

Mr. **MANTOYA**. No.

Senator **ABDNOR**. They want——

Mr. **MANTOYA**. I'm not sure I can get any of my records, because they've got all my tax returns and everything. OK, I'm just getting close to the amount.

Senator **ABDNOR**. Yes. I realize—there seems to be a pattern here, we're losing——

Mr. **MANTOYA**. I can't remember exactly what me and my wife made that year. See, I work a day job and I worked a night job playing music. And I had a bunch of musicians during the pipeline that come up here and I put them to work, you know, because they was all broke, and I helped them out—make some extra money. You know, I'd write them out a check out of my checking. Well, my wife, I think, made $10,000 that year and I made $20,000 driving truck and another, I don't know, $10,000 or $15,000 playing music. Well, our total gross income wasn't over $45,000 or $46,000 at the most, that's giving a big one, but they said I owe taxes exceeding $42,000 or $43,000 plus penalties and plus interest for the year 1978.

Senator ABDNOR. Did they ever tell you how they came up with that figure?

Mr. MANTOYA. Yeah, they said that according to my tax form now—I filled out a tax form for maybe, I don't know, $90,000, $100,000. Well, what the deal is, I didn't make that money. I paid my musicians $50,000 or $60,000 that year, you know, with my check stub, you know, checks paying them their wages. And the way the club works it, is that they pay $1,800 a week to the band and they just give it to one person instead of making out five or six different checks to the entertainers. At the time we worked for Rex Gavin. And I wrote out the checks to the separate musicians, each one. Well, they told me they wanted a deal from Rex Gavin, also, about how much—you know how much money he paid us in that year, because I just wrote it down on my calendar what I had been paid. Well, I went to see Rex Gavin and Rex Gavin told me to tell them to shove it, that he ain't going to give him nothing. If they want to pay him $100 an hour for a CPA man to go down and check his records in Anchorage then he'll get the records for me, no other way would he do it.

Senator STEVENS. Was this in Anchorage you worked?

Mr. MANTOYA. No, sir, I worked right here. Fairbanks.

Senator STEVENS. All of this—when the band was operating here too?

Mr. MANTOYA. Yes, sir, at the Silver Spur at the time.

Senator STEVENS. Have you been ordered to come to Anchorage before on this?

Mr. MANTOYA. No, not that I know of.

Senator STEVENS. This says for you to appear in Anchorage and bring all your records.

Mr. MANTOYA. Yeah.

Senator STEVENS. And you've already given them to them here?

Mr. MANTOYA. I gave them all my records 1½ years ago. Every record that I could possibly have.

Senator STEVENS. I'd like to have a copy of that, Mr. Chairman.

Senator ABDNOR. Fine.

Mr. MANTOYA. Do I have to go to Anchorage on that. What grounds have I got?

Senator STEVENS. Well, I hate to tell you, but we can't give you legal advice.

Mr. MANTOYA. No, I know. But, I mean, I just want—I was told to ask my Senators what to do about this.

Senator STEVENS. We'll ask them a little while later. You stick around, we'll ask them why they're asking you to come to Anchorage when they've already got your records here. OK?

Mr. MANTOYA. OK.

Senator ABDNOR. Thank you. Mona Oliver.

STATEMENT OF MONA OLIVER

Ms. OLIVER. It will take me just a few moments to set up.

Senator ABDNOR. All right. Fine.

Ms. OLIVER. OK. I can do this quickly if you've got the forms, because I have forms that have been sent to me and I can just read off the form number that's at the bottom, and that will give you an idea. I have authorized you to go ahead and go through all tax years that the IRS has on me, and I certainly hope that the IRS doesn't destroy any of my records in the interim between now and when the committee is able to get to them.

April 29, 1977, Robery H. Terry, Director, Service Center, sent, from Ogden, Utah, form FL 1603, revision date February 2, 1977, enclosures forms 1040. Now, it seemed a little odd, but she sent two copies. This was on registered airmail, return receipt requested, No. 180138, and it was picked up, I would say approximately, May 15. That could be checked with the local post office on a form 3849. Basically, it says that your U.S. tax return, you know, we've received it, but it's not acceptable as a tax return, and failure to file a required return may subject you to prosecution under Internal Revenue Code, section 7203. You may also be subject to prosecution for evasion of income tax under Internal Revenue Code, section 7201. And they include the blank forms, the 1040 forms.

Senator STEVENS. What was the reason why it was rejected?

Ms. OLIVER. They never do say on here exactly why it was rejected. I would assume that because in 1976 we did file a joint return and to certain questions we objected to answering them according to—because of constitutional issues, which I understand the committee does not wish to get into, so I was trying to not mention them.

Senator STEVENS. Did you pay a tax?

Ms. OLIVER. Yes, sir. In 1976, I worked for the U.S. Postal Service and I was claiming zero deductions, and I don't see how the Postal Service would not take——

Senator STEVENS. You had withholding, but did you pay a tax when you filed the return?

Ms. OLIVER. I had all my W-2's attached to it and there was not an additional check attached to—check or money order or anything like that attached to the 1040 which we did send in. We did not get any refunds for that year either.

Senator ABDNOR. But your records that you submitted showed that the withholding was more than adequate to cover what you owed for taxes, is that right?

Ms. OLIVER. Pardon?

Senator ABDNOR. You said they withheld, the Postal Department?

Ms. OLIVER. Yes.

Senator ABDNOR. That amount they withheld covered the entire tax bill you submitted for the year, right? Your tax receipt—tax forms you sent in, you obviously—what I'm trying to say, you said you didn't get any refunds, so I'm assuming that the tax return that you filed come out equal to what they withheld. I mean, what you owed was equal to what they withheld; is that what we're saying?

Ms. **Oliver**. No, sir. That's not what we're saying at all. What I'm saying is that I did not state as to whether I was owed a refund or whether there was additional owing. However, you can make computations yourself very quickly and you will find out that if you claim zero deductions that it's going to end up that the Internal Revenue Service does owe you at the end of the year.

Senator **Abdnor**. Yes: if you have no other income; other outside income, I would have to agree.

Ms. **Oliver**. OK. I can't find the date on this. Rats. OK, Yes. September 12, 1977, Henry H. Philcox, he's the chief or was the chief, service center, audit division, sent us a form 4960, part 1, revised October 1976, in which it says that the total tax after correction was $8,801.30. Tax shown on return or correction notice, zero, increase in tax is $8,801.30 less overpayment. Refund shown on return or correction notice, $5,414.54. Came up with additional tax due IRS from the correction $3,386.92. Now, in simple mathematics if you take and you subtract that you're going to find out that Mr. Philcox or whoever filled this out for him, either didn't use their computer, or else they don't know how to subtract, because when you subtract four from zero you always come up with a six unless you're working in a binary function. And he came up with a two. In fact, I cannot believe—remember at this moment if it's exactly 86 cents off or 16 cents off, it's something right around in there.

We sent them a letter—we sent a letter to Mr. Philcox on September 19, 1977 telling him that there were mathematical errors in this form and until he corrected the form that we could not give him any other information. We asked him to please return the letter within the next 15 days, which is the time limit which he had given us. And we never heard from Mr. Philcox. There was silence.

In October 1978 we received form 4840, part 1, revision date December 1976, from Sherilyn J. Ansley, Internal Revenue Service, Anchorage. It says, basically, that although notices and demands have been made for payment of your Federal tax liability shown below, we have no record of receiving the amount due. And here the total amount due is different from the amount due on Mr. Philcox's letter. The balance of prior assessment is different. Mr. Philcox's prior assessment was $3,386.92, now they have balance of prior assessment, $4,176.55. That's an $800 difference.

We wrote to Sherilyn Ansley, certified letter No. 798665 with a return receipt. We told her that we had not received any information other than Mr. Philcox's first letter, our answer to it, and we sent her a copy of her letter. And we said, you know, "What's going on?" We never heard from Sherilyn J. Ansley, we never heard from Anchorage, we never heard from Fairbanks, until February 6, 1979.

My hand is in a cast, because I've had surgery. I picked up the letter, it was sent regular first-class mail, and it's a form L-33, revised October 1975. It's addressed to Mr. and Mrs. Oliver.

> Dear Mr. and Mrs. Oliver, I've scheduled a meeting with you for the purpose shown below, payment of your 1976 income tax and failure to respond will result in an enforced collection.

Nice little threat there.

The date, time, and place of appointment are shown above. When you come in please bring this letter and the records, if any, indicated below. If you have other information or documents that may be helpful in resolving this matter, I would appreciate your bringing them also. If you are unable to keep this appointment, please let me know as soon as possible, so we can schedule another time. Thank you for your cooperation. Sincerely yours, Annette Schneider, Revenue Officer.

REQUEST FOR DELAY

I called Annette Schneider as soon as I could get to a telephone. I explained to her that I was in a cast, that I was having to rely on other people to get me from A to B, that I was not going to be able to come to this conference the way that things looked right then. Also, I told her that my husband was not presently in Alaska, that he was flying and that he was in Michigan, the State of Michigan, could she please wait until my husband was back. No, she couldn't wait, and I said, "Well, can I talk to your supervisor, please?" "Well, in order to do that you're going to have to call Anchorage." And I said, "OK, fine. What's his name? What's his number?" His name was Darrell Nather, and I called the number, and I called it long distance. And he said, well, you know, basically it boiled down to, well, gee whiz, Mrs. Oliver, that's too bad, you're just going to have to appear. And I had explained that I was in a cast, and I also explained to Mr. Nather that at that point the temperature outside was approximately 46° below zero. I did my best and I got a friend who would take me in the next day; spent the night at that friend's place. I was not—we were not able to get the car to start in the morning, and she had me scheduled for 10 a.m. I started calling at 8 a.m., no one was there, approximately 8:15 I got an answer, I asked if Annette Schneider was in, she was not. I told them who I was. I told them I was having automobile problems, that I would be in as soon as possible, and I would continue calling and when did they expect Annette Schneider in. They said approximately 8:30, but she didn't have—I said, "Well, does she have a home phone? I'll call her at home and tell her." "No, she doesn't have a home phone. She lives way on out." I said, OK.

We went ahead—we finally got the car running. And I'm sure, Senator Stevens, that you know what's like to try to get a car running at 50° below sometimes. They will not start up. We got them running, the car running. We managed to get down there at approximately 2 p.m. Ms. Schneider was not very nice, I'll just say that. I wanted to tape record what was going on, because I didn't—there's no way that I can say something and listen to something and be absolutely, positively sure that what I repeat to my husband is going to be the correct thing. Well, she said, "Well, wait a minute." She went and she got Allen Hook, and he's a big, tall man. He's about 6 feet 3 inches or so. And I guess I was supposed to be scared, because this was a male figure. And he proceeded to tell me, "Well, you can't record, because that's against national policy." And I had to dig each question—each answer, out of him. I said, "National policy from where?" He says, "From IRS." I said, "From IRS what?" He says, "From IRS headquarters." I said, "From IRS headquarters, where?" He says, "in Washington." I said, "From IRS headquarters in Washington, what, State, D.C., what?" He says, "Washington, D.C." I said. "Thank you, Mr.

Hook." I tried to always be very polite and courteous. I tried to not raise my voice. I did my best. During that—I'll call it an interview, Ms. Schneider asked me if I had a check for the total amount, which comes to—well, approximately, $4,500. I told her no, I did not have a check for that total amount. I told her I didn't think that she should be holding this type of thing without my husband present, because I couldn't speak for my husband. She really did not respond to that. She never showed me a 1040 form that she had filled out. Now, since then I have gone through Freedom of Information Act request and I have found out that she listed in her notes for that day that she showed me a 1040 that was filled out. I have a witness who was sitting in that office with me. That person didn't see a 1040. Why is Ms. Schneider not saying exactly what happened in these worksheets that she's supposed to fill out? I'd really like to know.

ATTACHMENT OF WAGES

Approximately—OK, that was the 7th that I talked with them. On February 9, 1979, Annette Schneider sent a letter to my husband's employer, and I had furnished the name of the employer when Annette Schenider asked for it, to levy my husband's wages. In other words, this would be $100 every 2 weeks or $50 every week or, if you really figure it out, $25 per person to live on per week. That's what they were leaving us. I don't know how Washington, D.C. prices are. I know what Fairbanks, Alaska prices are. It's impossible to live on that.

Senator **Abdnor**. Well, were you still working at the time?

Ms. **Oliver**. I was not working at the time. I was a homemaker. She never questioned that, though. She never asked that question.

Senator **Abdnor**. Let me go back to the very beginning—the first problem. You said you submitted your return and didn't take anything out of withholding, you had zero deductions. Was that a joint return with you and your husband?

Ms. **Oliver**. Yes, sir, it was.

Senator **Abdnor**. And was your income listed in that too?

Ms. **Oliver**. The W-2's were listed.

Senator **Abdnor**. You get your income on a W-2 also. I didn't catch the business you were in, I guess. Trucking, is that what you said?

Ms. **Oliver**. It's—now, you're coming into a question of what is income.

Senator **Abdnor**. Well, yes——

Ms. **Oliver**. I know this is a legal thing. I'm trying to stay out of it.

Senator **Abdnor**. Well, yes, but let me ask you, was it your own business or were you working for somebody? I guess I'm asking that.

Mr. **Oliver**. I think the question you're asking—I had wages at that time. And there's some dispute between us and the IRS as to what wages and income—if there's any difference or if they're the same thing, which is I suppose, not important at this time; wages.

Ms. **Oliver**. We both had wages for the year of 1976. The person who received the letter from Annette Schneider was Eileen Bryant, who was the secretary there at Pacific Alaska.

On April 1, 19- —it says that his date—OK, that this was filed April 1, 1978. Oh, I see, I'm sorry. March 8, 1979, it's a letter, 1099-DO, revision August 1977, basically, it says that they are disallowing my husband's W-4, sincerely yours, Frank R. Beria, with the initials A. S. I assume that's Annette Schnieder. It was sent via certified mail No. 812843, return receipt requested.

Oh, I forgot to mention something. At the February 7 meeting with Annette Schneider I asked her to schedule a conference or meeting with my husband, herself, and me, so all three of us could sit down and talk turkey. I asked her, also, to hold off the check bit. And she said, "No, I can't do that until April—I can't wait that long. I can't wait until April 1." But she did go ahead and set up a meeting. April 1 landed on a Sunday. April 2 landed on a Monday. I asked for April 2. In other words, to get in there as soon as possible; as soon as my husband had returned from Michigan. On March 14, 1979, Annette Schneider sent a letter. Now, this is an actual, honest-to-goodness letter. It's not a form letter. "Dear Mr. and Mrs. Oliver, I have rescheduled your requested appointment to April 5, 1979, at 2 p.m." She left the hour the same, she changed the date. "If this time is not convenient for you, please let me know," And we received that March 15, 1979.

On April 5, 1979, as my husband and I are walking up the steps of the Federal Court Building, right on outside, Barry Smith and Dennis Ponder are standing there outside, kind of hands back like this. They're special agents. They work for CID, criminal investigations division. And they're smiling, and a trooper stepped up and said, "Are you,"—this is a State Trooper, he said, "Are you Stephen Oliver?" And my husband said, "Yes, I am." And the trooper says, "You're under arrest on a bench warrant issued by Judge Gerald J. VanHoomissen," who is a State district judge and in the superior court. And it was on a charge of contempt of court, which Judge VanHoomissen later let my husband out of jail, et cetera.

The only person who knew that my husband and I were coming to that meeting was Annette Schneider. How did the troopers find out? Annette Schneider has written in her FOI that she didn't call the troopers. Well, who did she tell so that someone else could call the troopers? The troopers would not just appear. And it's the fact—the thing that really bothers me is that the car was sitting there waiting for us. Because we were one-half hour late to the meeting, and we had called and told Ms. Schneider that we were running late and we were sorry, and that we could be there just as soon as we could. Why would she call the police? I would like that answered. I would like to know who called the police.

AFFIDAVIT FOR TAXPAYER PROTECTION

On that day, after my husband had been arrested and I had calmed down a little bit, I turned in an affidavit for taxpayer protection. It is signed by my husband, myself, two witnesses, and a public notary. Basically, it says that we have not had taxable income under the sixteenth amendment and we'd like to have the money that has been turned in as income returned to us. Nothing has been said about that. It's never been addressed. And I have witnesses that I did turn it in. Also, when I—we put in our Freedom of Information Act request it was in the papers which were given to us.

On April 12—oh pardon me, I'm ahead of myself. On April 6 Annette Schneider sent a summons, form 2039–A, revision date November 1978, to the National Bank of Alaska, Sixth and Cushman, requesting all documents in your possession or control which reflect method of payment and total balance due on note between National Bank of Alaska, located at dot-da-da, and the above named taxpayers, and it goes on and on. And then, furthermore, she wants all documents in your possession or control which are a financial statement submitted by the above named taxpayers between National Bank of Alaska, located at the same address. However, the period for this summons is calendar year ending, December 30, 1979. Now, she's turning it in April 6, 1979 and it's for calendar year ending December 31, 1979. In other words, it's an ongoing summons. And this is the day after my husband was arrested. This is the day after she received the affidavit for taxpayer protection.

On approximately April 12 my husband will tell you, if he can remember, Annette Schneider and another man, who was with the Internal Revenue Service, appeared out at the correctional center to talk to my husband while my husband was incarcerated. Why did they appear? Now, if that is not harassment, I don't know what harassment is. You're not even supposed to be questioned by a policeman in that type of situation. My husband refused to talk to them, and told them to please get out, and they finally left.

On October 12 I received a letter from the assistant vice president, Victor Malazzi of the National Bank of Alaska, telling me that they had received a summons and basically, it was what do you want to do about it? It was certified 368732. I sent back to the bank and a copy to the IRS.

Senator **Abdnor**. Mrs. Oliver, I'm not trying to rush this, but somehow could we move this along a little quicker, because——

Ms. **Oliver**. Oh, it'll move very quickly at this point.

Senator **Abdnor**. Oh, all right.

Ms. Oliver. A notice to stay compliance with IRS summons, certified P.O. 12632237, with a return receipt. There was a cover letter, which, basically, said that this is a notice to stay compliance, to Annette Schneider at the Federal Building, P.O. 12632236, with a return receipt, signed, both—pardon me, both of them.

IRS ATTACHMENT OF AUTOMOBILE

So my husband's wages are—they're taking everything out at a $100 a week. We came here to this very courtroom to watch a trial of a man. Our VW bug is parked outside. We thought that—you know, OK, fine, they're going to levy on the wages. Let them levy on the wages. Let them, you know, take it out that way, it's fine. We'll just stay calm about it. Approximately, noon, for the break of the court, a friend of ours told us that, "Hey, the IRS is carting your car away." We told the person that they were crazy. They said, "I'm not joking." I ran outside. Sure enough Ron's Towing Service had a big truck attached to the front of my little VW bug and they've moved it from a section like over here, where you'd parked with about six people parked behind you, clear on around and it's parked like, approximately, over here; that little corner as you come into the Federal building if you use the parking area. And the fence area is back here. And I was very angry. I did not threaten anyone. I did not hit anyone. Took my keys out of my pocket, opened up the door, started pulling our personal belongings out of the car, at which point I turned around and I said to Annette Schneider, "It is all right if we take our personal belongings out of the car, isn't it, Annette?" And she said, "Yes, it is." However, in her report she writes that, "Taxpayers requested if they could remove all personal belongings and they were allowed to do so." Taxpayers were already removing personal belongings. It was more of a statement to Annette Schneider than a question. We sat in the car from approximately 12 noon, until approximately 6:30 p.m. At approximately 6:30 p.m. they're waving pieces of paper at us, and I'm just looking down at the floor. I'm angry. I'm hurt. Barry Smith told the GSA man who's supposed to guard the building—he either told him or he asked him—to break into our car. And the man said he wouldn't, cause that wasn't his jurisdiction. They took his nightstick and Dennis Ponder has the nightstick in his hand—the VW has a little wing, triangular shaped window, and I put my hand up in front of it. My husband's arm is leaning like this and the other glass to the door window is like this, if they break into that they're going to be scratching him up. I put my hand across it, so that they wouldn't hit into it. Whether you believe it or not, Dennis Ponder actually took that nightstick and broke the glass right into my hand. Then they—he scraped out the window. They realized they could not get to the door handle, so they decided that they would break open the other window on that side of the car. Now, there's a question I have. This car, this red 1970 VW bug, had already been taken over by the Internal Revenue Service, was it not a piece of Federal property? And, being a piece of Federal property, who in the heck gave Dennis Ponder the right to break into Federal property? Who in the heck gave Barry Smith the right to break into Federal property? That's destroying Federal property. Isn't that a crime?

So Dennis Ponder attempts to break in the window. He can't. After two attempts Barry Smith says, "Give that to me. I'll show you how to do it." Bam, he bounces off of it, and bam, he breaks it. They scratched up my husband's arm. They pulled my husband from the car. My husband did not strike out at them. He did not threaten them with words; nothing. There's a little thing that you can hold when you are driving quickly around a corner in a VW bug and it's right in front of the passenger seat, which is where I was sitting, and I held on to it.

Barry Smith reached forward inside the car and attempted to pinch the nerves and muscles and possibly to restrict the blood vessels in my neck. I informed Barry Smith, I said, "I am an epileptic. Don't do that. You could cause a seizure." I had an arm pulled over to the side like this by an agent whose name I do not know. No one had showed identification at this point. I had another—someone opened up the window—pardon me, the door—opened up the door, unlocked the door, opened up the door completely and I'm like this. And Barry Smith is still trying to grab and pinch my neck. For what purpose, did he want to cause an epileptic seizure? He did not do this once or twice, but three times, and each time I warned that man. Finally, they've got me like this and they eventually pulled me out of the car. I would not help them. That was my car. They pulled me out, they dragged me through glass, which had sprayed underneath and over the top of the Volkswagen when they had broken the window on my husband's side. I received scratches and contusions on my back. I had bruises on my legs. I had bruises on my arms. This is how a Federal agency—you know, officers of a Federal agency are supposed to act; strong-arming citizens.

Then, after they had taken the Volkswagen, they used a GSA vehicle and pushed it on back behind the fence, I requested the rest of the personal belongings. I was given a box of personal belongings. I went through that box of personal belongings. I'd had a set of keys underneath one of the seats. The keys had been gone through and the keys to that vehicle had been stolen. The keys are not an integral part of the automobile. They are a separate part. I had an Internal Revenue Service officer, Annette Schneider, steal keys.

The next day——

Senator ABDNOR. Pardon me, Mrs. Oliver, how much longer do you anticipate this going? We have witnesses that--it's unfortunate both ways, but I would like to give everybody the opportunity to be heard, too.

Mr. OLIVER. Can we submit this in writing?

Senator ABDNOR. We'd like it very much. It would be better—I mean, I'm trying to make some notes. I have a——

STATUTORY NOTICE OF DEFICIENCY

Ms. OLIVER. OK. One thing I'd like to know is, we went and found out that a 90-day statutory notice of deficiency was mailed to us, as is required by Internal Revenue Code. It was mailed—allegedly mailed February 3, 1978, certified No. 61244, return receipt requested. That item was never received in the Fairbanks Post Office. You can verify this with U.S. Postal Inspector, MacIntosh. You can also verify it with U.S. Attorney Steve Cooper, who was calling MacIntosh and asking about it. I don't know if he sent a letter or not. I believe he did, I'm not positive. What does a citizen have if he is not allowed to receive his 90-day statutory notice of deficiency, so that he can go into Tax Court? Another thing is that this certified—this certified——

Senator ABDNOR. You never received it?

Ms. OLIVER. Never received it, and this certified No. 61244, was never received back into Ogden, Utah. If it had gone—there are other places named Fairbanks, like Fairbanks, Ariz. If it had gone to someplace like that and gotten messed up and been returned, they should have a copy of it in the postal service. It's called a 3849A. They don't have a copy of that. It's a big mailer. Maybe it's in a 3877, they don't have a copy of that. They don't have any copy of it. It just—it went into the mail stream and suddenly, poof, it disappears. We received no 90-day letter. What in the heck did we have to do? What choice did we have? We didn't know what was going on. We had no due process, no nothing. And Annette Schneider goes—in order to get a search warrant, swore, I believe under section 6331, a search warrant is undoubtedly public documents, that everything is just hunky-dunky and kosher. That, I believe, we had gotten the 90-day letter, which we had not received.

Senator ABDNOR. When were you supposedly to have receive—when was it intended to be—what time of the year was this?

Ms. OLIVER. What, when she——

Senator ABDNOR. Yes. That the letter supposedly—or the notice was supposedly sent to you. When was that?

Ms. OLIVER. The date the letter was supposed to have been sent, the 90-day statutory notice of deficiency, was February 3, 1978. We didn't learn about this thing, this letter, until we did our FOI, which was not until after the seizure of the car.

Mr. OLIVER. After the seizure of the car. I would think February.

Ms. OLIVER. You would think February? I think before that.

Mr. OLIVER. February of 1980, probably.

Ms. OLIVER. My husband thinks February of 1980. I think a little bit before that. We told——

Senator ABDNOR. I—we have——

Ms. OLIVER. Wait a minute, sir. We told Sherilyn Ansley in Anchorage that we had not received any notices and demands. This 90-day statutory notice of deficiency would be one of those notices and demands. Why didn't she reply to our letter? Why didn't she send us copies of the correspondence that the Internal Revenue Service had been sending to us? She just absolutely refused to answer us.

Senator ABDNOR. Could we have this documented in sequence here and send it to——

Mr. OLIVER. It will take us about 2 weeks to put all the documents together and we can certainly give you a running account.

Senator ABDNOR. You've had this pending a long time, I guess 2 more weeks isn't going to——

Mr. OLIVER. Could I go ahead and testify? I'll just make a few general comments.

Senator ABDNOR. Well, you're going to have to make it quick, because we've gone over a half hour, which is way more than I allocated to others and they could come back and say they want more time, so——

Mr. OLIVER. OK. Just generally, we did not receive notice, as required by law, so we could go to Tax Court. We had no further method of appealing this, at that point, because we did not receive our 90-day letter. We wrote them and told them that; they did not respond to us. We didn't tell them about the 90-day letter, because, at the time, I didn't understand the law, and realize that that was required. But I knew that we hadn't received any notices in advance. We wrote them and told them that; we got no response from them, whatsoever.

Also, I'd like to say, in regard to harassment, the IRS and the State are working hand-in-hand in this thing. Annette Schneider denies it in the FOI thing, but I was arrested on the steps of the Federal Building down here on the way to a long-standing meeting with the IRS, by the State on a different system. I mean, a different set of charges that I was dealing with them at the time, also related to taxes, by the way.

Senator ABDNOR. That was the State?

Mr. **Oliver**. That was a State thing; I was arrested here. OK. Let's see——

Ms. **Oliver**. There's an information-sharing agreement between the Federal Government and 48 of the 50 States. The two States that have not signed that agreement are Washington and the State of Texas.

Mr. **Oliver**. We have some legal problems with definitions and with rights that we're trying to work out with the IRS, but we can't get into court or anything the way it stands right now. We've got no recourse. That's another problem; there's no due process here. Maybe we're wrong. Maybe we don't have these rights. Maybe income and wages are exactly the same thing. Maybe that's what Congress intended when they enacted it, but there's no way we're going to know it, the way it's going right now, because we can't get into court and we can't get anybody to answer our questions.

Senator **Abdnor**. Well, I don't know exactly what we can come up with, but we like—I know it will be helpful to have——

Mr. **Oliver**. OK. We'll go ahead and send you all the stuff.

Senator **Abdnor**. Thank you. I appreciate——

Ms. **Oliver**. I'm sorry it took so long, but it's been a battle.

Senator **Abdnor**. I realize it, but we've all heard about the case a little and I know it was a major thing. Well, thank you. I think we have a Don—Donald Hymes.

STATEMENT OF DONALD HYMES

IRS AUDITING PROCEDURES

Mr. **Hymes**. My name is Donald Hymes. I've been a resident of Fairbanks for 24 years and a local teamster member for about 12. The problems we've had—my wife and I—have had with the IRS started in the early 1970's, called in for audits at different times. And then in 1975 we were audited for 1974 taxes. The audit went on and on. We gave them as much information as we thought we should after turning everything in the first time. Then we had a lawyer. It was taken care of in Anchorage and settled a couple of years later, and we got an additional $200 on our return—added to what we'd already received.

During this process the IRS wasn't quite as restricted as they are now, and they came up with a figure of $600 or $700 that we owed. They went to First National Bank and cleaned the account out without any notice at all to us. That was one of the first things. It's been going on ever since, and I just feel that it's total harassment.

Last May 3, one agent and two CID men came to our home and—first they went to—I don't know the exact sequence—but they went to the place where my wife was working and asked if she owned the business and they were told no. Then they came to our home, knocked on the door, she was home, talked to them and—for just a few minutes, because right away they said they wanted to talk to her about a certain year's tax papers. I felt it quite—find it quite unusual that no letter, no phone call, no prearrangements, just no appointment at all, they bang on the door, it's opened and "Do you have your papers for nineteen such and such?" My wife replied by saying, "Please put it in writing," which it was, but the questions weren't answered.

We've had all kinds of correspondence between Ogden, Anchorage, and Fairbanks. We've asked many questions. We have copies of everything. I didn't want to bring them; it was just too many things and it will slow your process up here too much—but reams of paper. And it seems that you never write a letter to an individual and receive an answer back from the same one. You can write to somebody, ask them questions, and someone else will answer the letter and never answer your questions.

Mrs. HYMES. At the time that we—they did send a letter asking for information, but the information they asked was so broad, like, we want everything and once we have everything we can ask for more. We asked, please, to expedite matters, to be more specific, and also to show exactly what they wanted it for, because they gave absolutely no reason whatsoever, you know, that they were disallowing anything or that they were questioning certain expenditures; nothing. They constantly and consistently to this date have refused to do that. Then eventually we got a letter from Anchorage asking my husband, not my husband and myself, but my husband to come down there for a meeting. My husband was out of town, so I talked to him on the phone and I wrote a letter back saying that my husband would be in town at a certain—by a certain date, and if they would be so kind as to send a plane ticket that he would come to Anchorage, because there was no other reason for him to go down there for. That letter was sent certified mail, but it was never replied to. The IRS never has met with us, even though in February they petitioned four banks—summoned four banks for records we supposedly had with them. As it is, we did not deal with those four banks or with all four banks, which to me is quite an example of a fishing expedition—that they have nothing; that they do not know what they're looking for, but they're looking for something.

Two of the agents, as my husband pointed out, who came to our home were CID agents. Through FOI there is paperwork indicating that we have been under CID investigation since 1978, which the IRS has been denying and which the IRS denied in court on the 14th of last month when we were in as an intervenor on the bank matter.

Mr. HYMES. We've tried to schedule appointments with them, nothing ever happens. It's just to the point where we can't get any questions answered. I just feel it's the same as everything else. Everything they do has been some type of intimidation.

Senator MURKOWSKI. What is the amount in question?

Mr. HYMES. We don't—no amount.

Mrs. HYMES. There is no amount. There is nothing definite. There is nothing that has been questioned, there is no amount in question. That is why we feel, at this point, it is simple harassment. If they had gone to one bank—to go to four banks—we notified the banks at that time not to comply unless the IRS got a court order. The IRS got a court order.

Senator STEVENS. Have you claimed immunity under constitutional concepts?

Mrs. HYMES. We have to certain questions; yes.

Senator STEVENS. Have you filed tax returns to show how much you had earned in the period in question?

Mrs. HYMES. That we did and, Senator, that is also available to the IRS, because each employer is required to file the W-2's.

Senator STEVENS. Did you file W-2's?

Mrs. HYMES. Yes; W-2's were filed, right.

Senator STEVENS. And it showed your income?

Mrs. HYMES. Yes; for the years that there were wages, right.

Senator STEVENS. I mean for the years that they're questioning now?

Mrs. HYMES. For the years that they're questioning there were not wages for every year, but for the years there were, yes, the records would be available to the IRS.

Senator STEVENS. But did you file them?

Mrs. HYMES. We filed for 1977, yes, and for—I don't know. I don't have the records available at hand, but everything was filed. Our 1040 was never questioned. Nothing ever specific was questioned. This is what we're objecting to. And that during this whole year of back and forth is that the IRS has never, you know, made the good faith effort to sit down with us to talk about it and to get straightened out what it is that they want. Why do they have to petition third parties before they come to us and try to settle the matter with us?

Mr. HYMES. In the form of third parties that is going—which they could do to anyone that lives in any community. You can go to the local borough or county office and find out what property you own. Go to the Department of Motor Vehicles, find out what vehicles you drive and own. And this has all been done prior to any charges or anything else.

Senator STEVENS. Well, if you failed to disclose the amount that you'd earned, I could understand that, to be very frank. I don't quite understand. Again, I ask you, did you refuse to pay taxes on the basis of any constitutional claim of immunity?

Mrs. HYMES. We did not refuse to pay taxes, no, sir. The taxes were paid——

Senator STEVENS. In terms of filing a form, a tax form? You filed your returns every year?

Mr. HYMES. The form was filed.

Mrs. HYMES. And the amount in question when we filed for the years we did not say we owed, we said we did not owe, but for the record, every year in the past we had received a refund.

Senator MURKOWSKI. Did they attach, physically, any of your funds when they notified the banks——

Mrs. HYMES. No, sir. We have not gotten anywhere. To this date I have no idea what it is that they want. Apparently they don't know——

Senator MURKOWSKI. Did the banks give you a copy or did you get a copy from IRS of what they went to the four banks, that you made reference to, for?

Mrs. HYMES. Yes. The four banks is all of our records.

Senator MURKOWSKI. Well, was it an attachment on your accounts?

Mrs. HYMES. No, sir. This is strictly information.

Senator MURKOWSKI. Do you have a copy of the attachment notice? It would be very helpful to have a copy of that for the record, so that we could ascertain specifically what it covered at your bank or any of the four banks.

Mrs. HYMES. I can get it up to you, yes, sir.

Senator MURKOWSKI. Mr. Chairman, I would suggest that we amass that for the record.

Senator ABDNOR. Fine.

Mrs. HYMES. All right. Yes; we can get copies to that.

Senator STEVENS. The procedures you've described are not ordinary and I just can't quite understand why they'd be applied in your case if you had filed your returns. You had filed your returns each year you had income; is that right?

Mrs. HYMES. That's right, that we had wages.

Senator STEVENS. And you did not claim that you were exempt from paying income taxes because of any constitutional basis?

Mrs. HYMES. No, sir. We claimed our constitutional rights to certain questions, but that was all.

Senator STEVENS. I see. But you did show a tax liability and you did pay taxes?

Mrs. HYMES. The taxes that were withheld out of the paycheck, yes, sir.

Senator STEVENS. Oh, no. You're not quite answering my questions now. Did you claim that income beyond that which was subject to withholding was not subject to taxation?

Mrs. HYMES. There was—you know, as far as I know, there was no other income.

Senator STEVENS. I see. All right.

Mr. HYMES. I think there would be a lot more people here speaking today if it weren't for the way the IRS acts. I'm sure that all of us that have been here today are going to have more problems than ever with them, because their two—the IRS's two biggest weapons are fear and intimidation of the people. The article in the magazine that you heard about earlier today gives a pretty good rundown on it. I've talked to hundreds and hundreds of people and they all feel the same way about the Federal Government's IRS, but they're afraid to say anything.

Senator MURKOWSKI. Well, I would like to respond to that fear. You have three U.S. Senators that, I assure you, are totally independent and responsive to the electorate. If I thought, for one moment, there would be any retribution toward any witness testifying, and I know my colleagues share that same feeling, why, we would be the first to make a significant issue of it. And I assure you, even though I am the junior Senator, I assume that such authority rests within the Senators in the U.S. Senate.

Mr. HYMES. The point I was trying to bring out is just, there would be a lot more people if they didn't have this fear.

Mrs. HYMES. Thank you.

Mr. HYMES. Thank you.

Senator ABDNOR. Thank you. Is Pricilla Pharr here?

STATEMENT OF PRICILLA PHARR

Ms. **Pharr**. Thank you. I have two stories to tell. Neither one of them happened to deal with an audit. It just happens to deal with the way that I was treated by the IRS.

In 1976 I received a divorce in superior court here in Fairbanks. Included in that court document, which was later known as a court order, a tax bill of $2,000 on my ex-husband's business was to be paid by my ex-husband. It was his business in his name. I was a homemaker. I had no income separate from his. Around November 1976 I was working, I brought home approximately $800 a month. I managed to get into a house through a special loan for single parents with children, dependent children. Out of that—I brought home about $1,000, I paid about $400 out in house payment, $360 out in child care, about $170, maybe at that time, in utilities. It left me about $70 a month for food, gas, doctor bills, anything like that, but I was working and I was supporting my children, at that time.

I received a letter in the mail from the Internal Revenue Service asking me to pay the $2,000 bill. I called them; they were in Anchorage at this time; this is where the letters originated from. I informed them of the situation and I told them I did not have $2,000 to pay them, and that I was under the understanding that this was something that my former husband was to pay. For a year after that every month I received a notice that my wages were going to be attached. I received requests to fill out financial statements.

I then received a letter that I was to appear in Anchorage, not here in Fairbanks, but Anchorage. By now the stress had definitely undone me and I was angry. My former husband was employed. He was working on the line. He was paying taxes. He had never, in this year's period of time, been contacted by the Internal Revenue Service.

I went down to the Second Avenue office for a meeting with a lady out of Anchorage. I was told not to bring my children to that meeting, although they would not pay for the day-care center for them, so I did bring them. I was in that office approximately 1½ hours. I had forms shoved in front of me to fill out and sign so that I can pay the IRS anywhere from $25 to $50 a week on a $2,000 tax bill. Well, I informed them that I would not fill out their forms. I left. I also had some assistance through the legal aid office here. We did go into court to try to get the money from my former husband.

During this time the lady from Anchorage informed me that if I did not have the money in her office on the following Friday she would file a lien. I happened to have a car that was being financed at the moment. It had about $500 due on it. I borrowed $500, I paid off the car off, and I sold it to somebody, so that they could put it in their name, so I could continue to work.

What happened then was, I was asked to come down to the IRS office once again and fill out these forms. I was then told that because I was—because I had a court order from the State of Alaska, the IRS did not have to honor it, because it was not a Federal court order. When I asked them if you could go to a Federal court and get a divorce, they told me no. So I felt that they should honor this judgment from a judge. I then asked them where it said in the law that I had to pay this bill. They told me that by signing my 1040 when I filed jointly that that made me as responsible as that other person. When, in fact, at the bottom of the 1040 all it says is, "That under penalties of perjury, I agree that the above information is true to the best of my belief."

It ended up when FHA tried to file for my house to go into—for the deed. The Internal Revenue Service had a $2,000 lien against me, floating out in nowheres land. It was immediately attached to the house that I was trying to buy when the papers were signed. In fact, it held up the actual recording of the house for 23 days, because I then had to sign a piece of paper called a lien of subordination, which, in essence, apparently gives the IRS a second lien on your home. At that time I went ahead and signed it, because I couldn't fight it any more. I did not have the money for an attorney. The attorneys told me that there was really nothing they could do, it was just a bunch of bureaucracy.

I then found out where my former husband was working, which was right in town about four houses away from where I was. When I asked the IRS why they had not tried to contact him and send him a letter letting him know about this, they told me—and it was a gentleman in this office here in town, "Because I was a stable individual, I was a property buyer, and they could get me, that's why." Now, I was 24 years old at this time, and I was shocked.

In 1977 I remarried. I then—we then filed a joint tax return under my new husband's name and my name; we had no problem. In 1978 I filled out the tax forms and they were filled out in my name and my husband's name. In 1979 a tax return was held up to us for approximately 8 months, because according to the IRS I was not who I said I was because of a name change. Now, there is no law that says that I have to go into the Social Security office and change my name every time I marry or divorce or whatever. Somewhere along the line a computer had thrown out my tax return, supposedly because it did not match my social security number as originally filed. However, for 2 years it never threw this little bit of information out.

Senator STEVENS. If you solve that let me know, will you? My new wife has got the same problem right now, and she's wondering why the computer tells her she's not herself. I'd like to know the answer to that one, I really would. It would help me at home.

Ms. PHARR. OK. About that time I received in the mail, from the Social Security department, a new social security card with my name typed on it and my old number. I started wondering, how in the world or—who had changed this. I called the Social Security office and I was told that I had changed it. And I said doesn't—wouldn't I have to come into your office to do this? And she said, yes, and I said I had never been into her office. I was then informed that my husband had changed it. And said, isn't that illegal for someone else—yes, that's illegal, so he couldn't have done it. Well, they would check. Well, it's now been approximately 2 years, nobody can tell me who changed that information in the social security computer. I have one idea, and that's the Internal Revenue Service. And it is my understanding that they do not have access to those files and they are not supposed to, and there is not supposed to be an exchange of information between social security and anyone.

I personally feel that this is probably the beginning of a good audit on me, because I do not understand why they needed to change this information. It has even gone to the point that I have been told that I never received a card with that particular name on it. I have that card in my possession. To me, it all gets back to, again, the IRS now has so many files under so many names—I was asked why I filed my name first on a 1040 income tax return. Was I the head of the house? I think, in 1980-81, that's a rather poor question to ask any female. I was also asked if I was a feminist, because the woman in Anchorage had talked to 30 women in Alaska that this had been done to. That apparently when they put their name first on the form the computer kicked it out and said they couldn't be filing. Now, I'd like to know why this type of bureaucracy goes on? Why are we paying these people with tax money? They are not doing a job, they're harassing. That's all I really have to say.

Senator STEVENS. Thank you. Interesting questions. I was going to ask them that question anyway.

Senator MURKOWSKI. I have a question. The $2,000 in question, how was that ultimately resolved?

Ms. PHARR. I called a certain individual here in the Internal Revenue Service and I said, "I would like the lien off of my house. My ex-husband is working down the road. You can drive in your little car right down"—which he did the same day, and they got it solved within a week. But I have yet to receive a copy of the lien of subordination being released. I know that it was, because I later—you know, I found out. But I was never sent it in the mail. But they were on me every single month for over a year.

Senator MURKOWSKI. So it was paid, ultimately, by your former husband?

Ms. PHARR. Right. It was paid and it—like I said, he was never contacted, not once. And the one thing that bothered me in the whole thing was, that when I finally got angry in their office and told them that I would quit work before they could attach my wages; that I would go on welfare; I would go on food stamps, then I would be paying—being paid by the taxpayers, they backed off just a little bit, because, I'm sure, it wouldn't have looked very good.

Senator ABDNOR. Thank you. Did you have any other questions?

Senator STEVENS. No. Thank you. I appreciate it. We'll find out about that too

PREPARED STATEMENT OF GEORGE S. HALTUCH

Senator MURKOWSKI. Thank you.

Senator ABDNOR. For the record, I'd like to show that I have a—the written statement of George S. Haltuch, H-a-l-t-u-c-h, which will be inserted in the record here.

[The statement follows:]

In 1975, I, George Haltuch and William S. Pool purchased from Kenneth Kunkel 15 acres of land off Goldstream Road.

In 1978, I was notified by IRS that the property had been liened and may be seized for Mr. Pool's nonpayment of taxes or whatever.

At this time Mr. Pool jointly with his wife, Pat, owned 5 acres and a house on Repp Road.

In January or February after first advertising the 15 acres for sale by IRS, the IRS confiscated and sold the 15 acres for $21,000—less than half of the appraised value, satisfying Mr. Kinkel's mortgage and applied to the balance of Mr. Pool's IRS debt.

When I asked IRS why they did not confiscate Mr. Pool's 5 acres and home, I was told by Annettee Schneider, an IRS agent in charge of this case, that the property was in joint ownership and Mrs. Pool had no debt with IRS.

I at that time asked Ms. Annette Schneider why had the property jointly owned by Mr. Pool and myself was selected.

I received no answer.

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

STATEMENT OF PHILLIP E. COATES, ASSISTANT COMMISSIONER FOR COMPLIANCE, POLICY AND PROGRAM DIRECTION FOR SERVICES COLLECTION, EXAMINATION AND CRIMINAL INVESTIGATION DIVISION—Resumed

IRS RESPONSE TO TAXPAYER CHARGES

Senator ABDNOR. All right, at this time then, we're going to call up Mr. Coates again. If you want to bring Mr. Cardoza and Mr. Carlson and—have you got enough chairs there?

Mr. COATES. Yes. Thanks. Mr. Chairman, I'm not sure how you want to handle the testimony this afternoon. If you want us to go through some of the witness' testimony and present our side on some that we can, particularly those that testified this morning on those that we have waivers. Some that waivers were not executed or came along later in the day, we'd like to have, possibly, the same option to present our views for the record within that 30-day period, I think, that we agreed upon in the hearings in Anchorage, if that would be satisfactory.

Senator ABDNOR. I think some of it is warranted.

CASE OF MR. MANTOYA

Senator STEVENS. I think that's good, Mr. Chairman. I asked one person to wait here, though, to find out why he's being summoned down to Anchorage, when we've got agents here.

Mr. COATES. May we deal with that one right now?

Senator STEVENS. Yes.

Mr. COATES. We would like possibly—could we see the summons?

Senator STEVENS. That came up in two other cases. If you've got 53 people here in Fairbanks, why would anyone be ordered to go to Anchorage?

Mr. COATES. That's what we need—Senator Stevens, this is a summons to the bank, the Alaska State Bank in Anchorage, asking for records relating to bank accounts. Mr. Mantoya is not being summoned, personally, by this summons.

Senator STEVENS. Well, you could have fooled me and I've been practicing law for 30 years. I read it and I thought it said it's to come to Anchorage.

Mr. COATES. No, sir, it's——

Senator STEVENS. Are you looking at both documents?

Mr. COATES. In the matter of the tax liability of Mr. Mantoya, the Commissioner of Internal Revenue, to the Alaska State Bank, Fifth and E, Anchorage. You are hereby summoned to appear before so and so to give records——

Senator STEVENS. Look at the second one.

Mr. COATES [continuing]. With respect to checking and savings accounts maintained or controlled, having signatory authority of the above-named individual, including bank statements, et cetera, et cetera, loan information, but it's to the bank.

Senator STEVENS. That's not the way I read it. Give me a copy of it again. What's that second page?

Mr. COATES. This is a notice to Mr. Mantoya indicating that the summons had been served—saying to Mr. Mantoya, enclosed is a copy of the summons served by the IRS to examine records or related testimony relating to records which you have made or kept for your business transactions, so forth, and attached to it is the summons to the Alaska Bank. So it's the—it's Mr. Mantoya's notification that a summons had been served.

Senator STEVENS. Well, that's very interesting, because I read it go to Anchorage and so did he. Why is this going to the Alaska State Bank in Anchorage anyway?

Senator MURKOWSKI. That's where the records are.

Mr. COATES. Probably, Senator Stevens, where the books and records or—the records of the Alaska State Bank are maintained. Perhaps, Mr. Carlson——

Senator STEVENS. Well, there's your answer anyway, Mr. Mantoya, you don't have to go.

Mr. MANTOYA. Thank you. I was on my way.

Senator STEVENS. Can I ask another question.

Mr. COATES. Certainly.

Senator STEVENS. We had testimony there in Anchorage yesterday from the bank of how much it costs to get these things. Why is it they're all the same? Each one that we've examined asks for the same thing, checking and savings accounts, maintained, controlled, or have signatory authority of the above-named individuals including the following information, bank statements, deposit slips of checking accounts for 1979 through 1980; of 1978 through—May of 1978 through June of 1978, October through November, why—loan record cards for 1978 and 1979 what—and I can understand if you're working a net worth case on someone, but I haven't seen any net worth cases in this hearing record so far. Why do you ask for so much?

Mr. COATES. It depends on the nature of the investigation, what type of return is filed, what information we have. Possibly we're working with no information, Senator.

Senator STEVENS. Everyone we've had so far in this oversight hearing has been the same. They've all had the same verbiage, you know, bank statements, statements showing deposit and withdrawals and loan records.

Mr. COATES. Which pretty much summarizes what we would need to conduct the investigation.

Senator STEVENS. Well, but is it—are they all the same? Would you need all those bank records?

Mr. COATES. I guess it would—again, it would depend upon each case and each case would turn upon its own if we could examine some of the summons——

Senator STEVENS. I think it should turn on each case, and I think you should be specific if you're looking for something. I can understand all the deposit slips and withdrawals on savings accounts, but to go into bank statements for the whole year, 2 and 3 years at a time——

Mr. COATES. It may be, Senator, that we could have a constitutional return with absolutely no information, no books and records made available, and that we would have to reconstruct financial information on which to determine the tax liability.

Senator ABDNOR. Well, what about this Mr. Mantoya who turned over all his receipts, everything he had, then he had nothing to fall back on when you gentlemen want more. What do you do in a case like that? Do you ever admit that maybe somebody could have—in your office could have lost that man's receipts and statements that he had? It's pretty tough when you can't—and I can see how this could happen, but do you ever acknowledge the fact that maybe it could have been someone in your—in the IRS that could have lost those for Mr. Mantoya, now that he doesn't have anything to turn to when you're making these requests?

Mr. COATES. Obviously it's possible, Senator, but——

Senator ABDNOR. It doesn't happen very often.

Mr. COATES. I would hope not, no, sir.

Senator ABDNOR. Well, we've had a couple cases of it today. I don't know. Are you calling these people liars? Maybe they are, I don't think so.

Mr. CARLSON. Senator, we wouldn't be calling them liars, but we don't know in this specific case whether we have the records——

Senator ABDNOR. Well, you had them. He took them in and give them—I mean, it's one—it's clearly one—either he's lying or you've lost them, one or the other.

Mr. CARLSON. We haven't had an opportunity to look into this case, because we didn't know what the testimony was going to be.

Senator ABDNOR. Well, you have—didn't he write back and tell you that he—I think, somewhere Mr. Mantoya made the statement today that he told you that you have his records, that you have the statements.

Mr. COATES. Senator, I'm told that we do not have a waiver in this particular case, so we shouldn't talk about this particular taxpayer.

SUMMONS ENFORCEMENT PROCEDURE

Let me add one other dimension to the summons that slipped my mind. I've been reminded that in the summons enforcement procedure, it's a long, time-consuming procedure to get books and records from third parties when the taxpayer comes in with a stay or intervention. Sometimes the wording on the summons is a coverall simply because we get a part of the information, need more, then we would have to go through the entire procedure one more time, the third time. Making the summons out to include all available financial records certainly would help expedite the investigation.

Senator MURKOWSKI. But as a matter of practicality, as was brought out in the testimony in Anchorage, what you're creating, from the standpoint of those that have to respond to these requests—and I'm talking about just in the area of those responding to the summons from the standpoint of the banks. Having been involved in the banking community for the last 20 years, I can readily appreciate and understand and be totally knowledgeable about the tremendous workload, because what you're doing is you're blanketing everything. You're makng your requests so general that in order to respond it isn't a matter of simply looking up one or two specific items, it's a tremendous research job. It's really one that puts an unfair burden on behalf of the financial community in order to be responsive, because their costs are certainly not covered by that.

Mr. COATES. You're right, Senator Murkowski.

MORE ATTENTION TO SPECIFICS

Senator MURKOWSKI. And I would hope that you would recognize that they are responding under the law as good citizens, but by the same token, I think you also have a responsibility to zero in on specifics, and I don't think that's being given enough attention.

Mr. COATES. No, sir. I would answer that we would hope the books and records or what records that we need to make the investigation would be made available by the taxpayer or by the taxpayer's representative. Unfortunately, that's not always the case, and then we do have to resort to third parties, and go through the summons procedure and stays and interventions over and over. Talk about statute problems, we would really have statute problems.

Senator STEVENS. Yeah, but it seems to me we've had instances here that—where we've asked for just voluminous returns from the banks. And from banks, and in each case, I think it's been four, where the tax liability, even if it was proved, is, you know, less than $4,000 or $5,000. I mean, the cost to the banks exceed the amount that the Government's going to get, even if you proved the liability. And I can't quite understand why small businesses should have that burden.

Mr. COATES. Well, my answer to that, Senator, would be, I'm not sure we know what the liability would be at the time we serve the summons for third party records. That's what we're attempting to ascertain.

Senator STEVENS. Well, I want to go through that when we get back and——

Senator MURKOWSKI. That's not my understanding. I would assume that you know what you're asking for, generally, as far as you tell the taxpayer how much they have as an obligation to the Federal Government, certainly. You know what that is in most of these cases.

Mr. COATES. We may or may not, Senator.

Senator MURKOWSKI. Well, I know, but in the cases that we have had testimony on, to the best of my recollection, there has been a very modest amount from the standpoint of what the dispute covered or what the Federal Government's claim was in relationship to the time involved, not only of the IRS and its officers that are doing the examination, but the bank who's responsible for the record production. And I would think at some point in time you'd make a decision of whether you are going for the principle of it, or that it is just simply a matter of it's not worth collecting the $84 if you have to spend $5,000 to get it.

Mr. COATES. Well, we wouldn't want to spend $5,000 to get $84. Certainly, Senator Murkowski——

Senator MURKOWSKI. Well, I think if you review this testimony, you'll find that happened.

Senator STEVENS. Yes, but you're not spending it. You're not spending it, that's the point. That bank was—last night was getting $5 an hour and you can't hire anyone in this State for $5 an hour.

Mr. COATES. We pay—at the present time the rate is $5 an hour and 10 cents per record, documented. And I would be the first to agree that that does not cover the bank's cost, and it's something that we do want to take a look at. And after Mrs. Perry testified in Anchorage we decided that we do want to go back and take a look at what we can do to reimburse the bank.

Senator STEVENS. Well, incidentally, we've got Bobby Mantoya's tax waiver.

Mr. COATES. I stand corrected on that, Senator, we do have a waiver on Mr. Mantoya.

Senator STEVENS. We insisted that every person that came in sign a tax waiver, and I hope that that's the case, because I don't think we can have a record where the Internal Revenue Service can tell us, we're sorry, we can't talk about that, so——

Mr. COATES. I don't think we have a waiver on every witness who's testified today.

Senator STEVENS. Well, I was not so informed until now, because I don't think we can have a full record unless we do have waivers. We'll go back and ask them again. If they really want answers to questions they're going to have to give us a waiver of the Freedom of Information Act, as far as it applies to this hearing. But I do think that we have some rather substantial problems, more coming out of this hearing than the others. How many people do you have in Fairbanks?

Mr. COATES. I'm going to say 26, but defer to the Director.

Mr. CARLSON. I believe there are 21 people here right now, but it's usually a staff of 26.

Senator STEVENS. And do you keep people here of all categories; agents, collection people?

Mr. CARLSON. Yes.

Senator STEVENS. It's a full fledged office?

Mr. CARLSON. Yes.

Senator STEVENS. Well, we've had two other witnesses talk about being asked to come to Anchorage. Under what circumstances would a taxpayer in this area be asked to go to Anchorage?

Mr. CARLSON. I can't answer that. In fact, I made a note of that myself and I will check into it, but I can't imagine why a person would be asked to go to Anchorage when, in fact, we have a collection——

Senator MURKOWSKI. Do you have a local director? What is——

Mr. CARLSON. We have a representative of mine to—in charge of the office, yes.

Senator MURKOWSKI. What is his title?

Mr. CARLSON. He's an audit group manager, or an Examination Division group manager.

Senator MURKOWSKI. And he's a resident?

Mr. CARLSON. But he has a collateral duty as a District Director's representative, my representative.

Senator Murkowski. And he's the chief here and this crew's responsible to him?

Mr. Carlson. No. He's in charge of the administrative affairs of the office. The managers for the Collection function and Taxpayer Service and Criminal Investigation Divisions would be down in Anchorage.

Senator Murkowski. Well, who do these people, these 23 or 26 people in Fairbanks, report to in Fairbanks?

Mr. Carlson. The examination people report to the examination group manager, because he is the group manager on site.

Senator Murkowski. Well, where is he?

Mr. Carlson. In Fairbanks. The managers for the collection function and the Criminal Investigation and Taxpayer Service functions are in Anchorage.

STAFF IN FAIRBANKS OFFICE

Senator Murkowski. Isn't that kind of an unwieldy internal structure, where you don't have one person in residence in Fairbanks responsible for the Fairbanks office? I mean, even in a small business you have a manager, and people report to the manager, and he's got control of the operation. The point I'm bringing up are the hours here. I don't know what they are, but I think it deserves some explanation in relationship to the number of agents that we have here, and—what kind of hours do we keep in Fairbanks?

Mr. Carlson. You're talking about the hours for the office; opening of this office?

Senator Murkowski. Yes.

Mr. Carlson. The Taxpayer Service—we have—we do have—provide taxpayer service, walk-in service, Monday, Tuesday, and Wednesdays between 8 a.m. and 4:30 p.m. On Thursdays and Fridays it's closed, and there's a sign on the door of the office hours and when the office is closed on Thursdays and Fridays there's a toll-free number for the taxpayer to call Taxpayer Service, which is a toll-free number to Anchorage.

Senator Murkowski. Yes, but they wouldn't have his file in Anchorage if he was working through the local office here, would they?

Mr. Carlson. That's true, but we do many of our—solve many of our inquiries by phone calls.

Senator Murkowski. So your office is open here 3 days a week.

Mr. Carlson. That's—the office for Examination and Collection is open 5 days a week. It's just for people walking in for Taxpayer Service.

Senator Murkowski. Well, I'm confused. If I have a situation where I need to come in and talk about my tax problem because we've got a difference or a dispute, do I have 5 days a week availability or 3?

Mr. Carlson. It would depend on the problem, Senator. For example if it was a collection problem and there was a collection person in the office—we have no office collection people, they're field people. If they're in the office they could answer the collection problem and take care of the account. But as a rule they should be working in the field most of the time, so if they were out in the field and there was no one there, they could leave a message, they could call Taxpayer Service and ask about an account, they can call into the office and leave a message for the revenue officer to call them.

OFFICE STAFFING

Senator STEVENS. Well, what about this fellow that testified that they attached all of his salary? He has five kids at home, nine in total, and they take his whole salary and he found that out, and he goes to the office and they say sorry, we're closed. You would think that he'd be able to find somebody to explain to him why the IRS had taken it, and that's Mr. Mathis. We do have a tax waiver on him too. Why would they—I can't quite understand, one, why would they take all of anybody's salary and second, why, if he comes in to talk about it, why can't he find someone there in the office on Thursdays and Fridays?

Mr. CARLSON. Well, the reason that we don't staff the office full time—well, during the filing period between January——

Senator STEVENS. I understand that. Now, we understand about customer service, but this is collection. They've already gone out and levied against him. The people that did it are right there in the office. Now, why can't he talk to one of them?

Mr. CARLSON. He actually could talk to one of them, because right down the hall in the same office there's a—where the examination group is and also where the—my representative's office is. It shows the open sign, hours 8 a.m. to 4:45 p.m., he could go in there. If there were a collection person in the office at that time they would call a revenue officer over to take care of that problem, if it was a collection problem. If the revenue officer was still out, there's a toll-free number that the person could call and say, hey, I have this bill and I need some advice on it. They have an account referral section in Taxpayer Service, they could call the Collection Division who would get back to the taxpayer and take care of his problem. Apparently Mr. Mathis made no contact back. He just went to the sign and went as far as to see the office was only open between Monday and Wednesday.

Senator STEVENS. He testified—my memory is that someone told him to go into this office; you go into that office and you find a sign saying it's not open today. I can't understand, if we've got a public office with people in it, why we've got a sign saying, sorry, we can't help you. Now, somehow or other the IRS ought to look a that.

Mr. COATES. Senator, let me see if I can shed any more light on it. The number of revenue officers here in Anchorage are what, four?

Senator STEVENS. We're in Fairbanks today.

Mr. COATES. I mean, Fairbanks. Their manager, their boss—supervisor is in Anchorage. They are field people. They spend a good part of their time in the field, so it's possible that a taxpayer could come to the Fairbanks Office looking for a revenue office and not find a revenue officer, because they were in the field, doing their work somewhere in this area. They could probably leave a message and get a call back, but more important, they can pick up the phone, use the toll-free number, call the Collection Division in Anchorage, and go ahead and get something going on their case, so that it could be resolved even that much quicker. Now, that's true 5 days a week. The 3 days a week that the office is open, it's open for taxpayer service during the nonfiling period. During the balance of that time the revenue officers, the criminal investigation agents, the revenue agents are working in the field. But the office is open to the public 3 days a week during nonfiling period and 5 days a week during the filing period. But obviously a taxpayer could leave a note, could leave a message, a call back, the office would always be open for something like that.

IRS BUDGET FOR TAXPAYER SERVICES

Senator MURKOWSKI. Mr. Coates, your budget for taxpayer services is $864 million. Total Internal Revenue Service budget is $2.5 billion. With 23 to 26 people here in Fairbanks, out of this office, whether they're in the field or out of the field, it is inconceivable to me that this office cannot be maintained on a 5-day-a-week schedule. Maybe you don't have the people there all the time that can be responsive, but at least somebody there, so that when somebody comes in they don't have to walk off and refer to a zenith number in Anchorage where they know they're not going to be able to get immediate satisfaction for the same reason, because the file isn't there. And I just don't buy the suggestion that you can't do it.

Mr. COATES. Senator Murkowski, I'm dealing with a subject that I don't have that much familiarity with, and that's the Fairbanks Office and Taxpayer Service. But I would say this, that it was my understanding that at one time this office was manned for taxpayer service 5 days a week.

Senator MURKOWSKI. Well, there are more people here now than there were then, and obviously more problems.

Mr. COATES. We do give the service during the filing period and I understand that the number of taxpayers requesting service during a year, about 75 percent of those requests are made during the filing period, in which we do man the office or the counters 5 days a week.

Senator MURKOWSKI. The point is, though, there are people in your office during this time, but the office is not open. This is a public office, this is a public service agency and we're not serving the public if we have the office open, but not available to the public.

Mr. COATES. Well, the office may be open, Senator, but there may not be somebody that has the skill to serve that particular taxpayer's request.

Senator MURKOWSKI. Well, it can't be if your office hours are Monday through Wednesday. Well, it's better than a telephone.

Senator STEVENS. I think the outcome of this hearing is that I think we've got to consult with the legislative committee, the finance committee, and with our full committee and see what's being done. I don't want to get into any rhetoric that may sound extreme, but I—let me tell you, if I ever found out that there was one person in my office and someone walked in and they said, I'm sorry, you'll have to come back when somebody else is here, because I can't help you on that, or pick up that number and you can call the Anchorage Office, the person wouldn't be there the next day.

Senator **Murkowski**. Absolutely.

Senator **Stevens**. We believe that we're in public service. And if they can't answer it, at least they can get the details and present it to the person when they do come back, so the constituent doesn't have to come back. As a matter of fact, we send buses, mobile offices out to deal with the people, because we've got such a large State here they can't come to some of our offices. But you guys got—my God, you've got about three times as much money as we spend to run the Congress, the whole Congress, and you can't—I just—I'm flabbergasted at what I've heard in the last 2 days. I really am. Because the public relations is gone out of the Internal Revenue Service. You know, they don't vote for you, so you don't have to respond to them the way we do. Maybe we ought to find a way to elect the Internal Revenue Commissioner, we might find some way to put this straight. [Applause from the audience.] No, don't do that. Don't do that. I'm not seeking any grandstanding. I'm serious. I'm real serious. You're just not responsive to the public as we must be, and yet we're supposed to be responsive to them. Somehow or other we've got to get you to come around. And I hope this record is studied, because I guarantee you I'm going to make it available to everybody that I know. But I just cannot compre—is the lady right, by the way—incidentally, what I told her is true, my wife, Catherine, has—her refund has been kicked out, because she now has my last name. And we're now in a fight with Social Security, not with you, just like she is, over whether she really is the same person that got that social security number. I was appalled to find out that IRS was kicking out the refund because Social Security says she's not the same person. And maybe we ought to prohibit you seeking those social security numbers, because it's just odd to find women being treated the way she's being treated, and this lady is treated the same way. And I'm just appalled, also, to hear that the return will be kicked out if we filed it Catherine A. and Theodore F. Stevens, instead of Theodore F. and Catherine A. Stevens.

NAME CHANGES ON SOCIAL SECURITY NUMBERS

Mr. **Coates**. May I, Senator, respond to this one for the record and get all the facts on exactly what the problems are when there is a name change as far as the social security number is concerned.

Senator **Stevens**. Well, I'd like to know why you hold up their refunds. It's none of your business, really, what they call themselves, as long as they've filed and you're returning the money that they're entitled to have refunded and, as far as you're concerned, you make out the check to the person who paid the taxes. All you have to do is make out the check to the person who paid the taxes, isn't that right?

Mr. **Coates**. Yes, sir.

Senator **Stevens**. And she paid taxes and my wife paid taxes as Catherine Ann Chandler, and now, as we filed the return, she shows that she's Catherine Ann Stevens, but you could make out the check to Catherine Ann Chandler and she's still legally authorized to sign that name. She was that—during that period——

Mr. **Coates**. The document that would trigger the refund would be the tax return which is filed in the name of Stevens, and that's the crux of the problem.

Senator **Stevens**. But she showed right on the return what her name was during the taxpaying period. She's a good lawyer, by the way. And she's as perplexed about this as I am. I hope that our experience leads to some changes in the Internal Revenue Service, because I just can't understand it.

Mr. **Coates**. We're going to—if we may, we would like to respond to this entire question for the record, and give you the facts of some of the problems that we're dealing with.

Senator **Stevens**. All right. I'd also like to know if the computer doesn't recognize female names first?

Mr. **Coates**. All right, sir, we'll make that a part of the same response.

[The information follows:]

Name Changes on Social Security Numbers

Question. Why must women change their name with Social Security after marriage—why can't we process the return in the maiden name? Senator Stevens specifically asked why we insist on the change before processing a return and making a refund.

Answer. Both the primary taxpayer's name and social security number (SSN) and the secondary taxpayer's name and SSN are matched against information provided to IRS by the Social Security Administration (SSA). The purpose of this is to ensure that payments, returns and refunds are processed to the correct taxpayer's account.

IRS can process the return in the taxpayer's maiden name provided that: (1) the maiden name is shown on the return (i.e., John Smith and Mary Brown) and, (2) the maiden name is on record with SSA.

The only time that IRS interrupts the processing of a return or the issuance of a refund is when the primary taxpayer's (1st person listed on the return) name and SSN fails to match SSA's records. In this instance, the taxpayer is issued an inquiry notice asking him or her to verify that the name and SSN are correct as IRS has intepreted them. Again, this is done to ensure that the return is being processed to the correct account.

The fact that the secondary taxpayer's name and SSN does not match SSA's records does not delay the processing of the return or the issuance of the refund. A follow-up inquiry notice is issued after the return is processed in order to perfect our records relating to the secondary taxpayer's SSN.

Question. Why can't we process a return when the wife's name is shown first?

Answer. IRS can process a return with the wife's name shown first, provided that the surname used on the return is on record with the Social Security Administration. Otherwise, an inquiry notice will be issued to ensure that the return is being processed to the correct account.

Senator **Stevens**. Maybe I ought to ask you what we do when we've got two males living together these days.

I really am—I'm—you know, I'm going to have a little stroke here if this keeps up, Mr. Chairman.

Senator **Abdnor**. Well, in the case of this—while we're on the subject of Mrs. Pharr when she was up here—I guess that's the lady——

Mr. COATES. May I, Senator? Senator Stevens mentioned Mr. Mathis and there were a couple of other things that we did want to talk with a little bit as far as Mr. Mathis was concerned.

Senator ABDNOR. Well, just before you get off on that, let's go back to Mrs. Pharr. Is there any particular reason—do you look over a combination on some of those—a couple owes you taxes and you take the most likely one that you can collect from—Mrs. Pharr was—even though she was divorced you were coming after her for the $2,000 and her husband's down the street working and you didn't attach his wages. Was there any reason for that?

Mr. COATES. The only answer I can give you, Senator, is I don't know the facts in that particular case, as to why the action was taken against Mrs. Pharr as opposed to her exhusband. We can certainly get the information, but ordinarily, Senator, we would—we wouldn't go after, necessarily, one versus the other. If one we couldn't find, and had made reasonable attempts to find, and the other had a source of income, we would certainly go after that one, if it's a joint liability. But there's no hard and fast rule that you go after one versus another when a joint return is filed.

Senator STEVENS. That's one of our legal myths, isn't it? Isn't that one of our legal myths, that the homemaker is jointly responsible for—your records showed who was the wage earner. She was a homemaker and your computer would kick her name out if she filed first. Now, how come it goes after her first? I can't quite understand——

Mr. COATES. As I said, I don't know the facts in this case, but it would be a joint liability, Senator Stevens.

Senator STEVENS. But that's three times during this hearing, in 2 days, that we've had women who testified that they were approached by the——

Mr. COATES. The revenue officer.

Senator STEVENS. Revenue office for repayment before contacting the husband at all. I think—you know, we've only had three cases and in all three cases it's been that way. It seems to me to be a pattern that I just don't understand.

Senator MURKOWSKI. Well, it seems like they went after the woman in each case after she left the homemaker status and went to work.

Senator STEVENS. Right. That's what I'm saying.

Mr. COATES. And then the question arises, was the exhusband or was the husband—had he been able—were we able to locate him; did he have a source of income? I don't know the facts in those, Senator.

Senator STEVENS. Isn't the question, though, whether your records show who was the wage earner? And how about the case where the income that was omitted was retirement pay of the husband? Now, there it wasn't disclosed at all. How can she be liable for income that was not disclosed, that she didn't receive? Now, I really think Internal Revenue Service procedures need some really deep thought; very deep thought.

Mr. COATES. In that particular case, and I'm not sure we have a waiver, so I'm going to speak on a hypothetical, if I might. In a case of that type, that delinquent account had been issued sometime previously, 3 or 4 years prior to the date that the levy was served. It was a joint account. I think it was filed as a joint return, so the liability would have been a joint account. When the levy was served, I think you said on the State of Alaska on one of the tax rebates, when the levy was served apparently there was a levyable source of income. It was a joint liability and—

Senator **Stevens**. But that income that she paid the State on was her income in the period after her separation, was the way I understood it; after the divorce. She had filed for a refund from the State.

Mr. **Coates**. Do we have a waiver on this one?

Senator **Stevens**. I think—you know, I'd like to see that explained in the record. But again, you know, the real problem is, if it was retirement income of the husband, one would think that any collection officer would go after the husband first. Without regard to the facts of this case, why would the Internal Revenue Service go after the nonwage earner before they went after the wage earner?

Mr. **Coates**. Senator, I can't answer that. There's no rule that we would go after the nonwage earner versus the wage earner. We would go after distrainable assets, usually liquid assets, to satisfy the tax liability. Let's assume that it's a joint liability, a legal joint liability, and there is an asset, bank accounts, whatever it may be, and we can't locate the other spouse, just cannot locate the spouse, don't know where he or she is, we would proceed against the spouse, on a joint liability, that we were able to locate if there was source of assets to satisfy the account.

Senator **Stevens**. Well, I don't know.

Senator **Murkowski**. That makes it pretty rough oftentimes, though.

Senator **Stevens**. The testimony of the IRS is leading to one divorce here, from that one old gentleman. His wife won't stand the fact that he's going to fight you. It seems to me we're using procedures which cause people to be antagonistic when you get an—as I—you know. Well, I've gone too far. We're cutting into a lot of people's time. I'd rather see you respond for the record as completely as you can in these cases.

Mr. Chairman, I think we ought to see if—have you got anything you would like to testify to this afternoon?

Mr. **Coates**. We certainly will respond to those cases that we can, where we have a waiver and can make it a matter of record, we do want to.

Senator **Murkowski**. Well, do you have some more that you have waivers on that you could talk about?

Mr. **Coates**. Yes, sir, We have others that we have waivers on that we can talk about. Some, that testified this morning, where we were able to ascertain the facts. Where we haven't been able to ascertain the facts we will, if we have waivers, make the information available for the record.

FEDERAL TAX DEPOSITS

I do want to bring up one issue that Mr. MacPhee mentioned this morning with respect to making timely Federal deposits, Federal tax deposits. It's rather obvious that in a State like Alaska, that it is a difficult problem, and we've recognized it as a difficult problem, and we abate the penalty when the issue comes up, because the deposit wasn't made within the 3 days or the specified time. This is an area that we're going to look at. We feel it's something that we should look at. What happens in this instance is that the deposit is made but is delinquent and the computer issues a delinquency 5-percent notice. Then after we sit down and deal with it we abate the tax, because we feel there is reasonable cause to justify abatement of the penalty. We're going to have to take a look at this one, because I think that Mr. MacPhee raised a perfectly valid question that may be somewhat peculiar to the State of Alaska.

Senator STEVENS. Well, let me give you one that's even more peculiar. Having practiced law here, we got—a lot of the checks we receive in the process of the practice of law are checks that you can only deposit for collection in our banks. Frank's a banker, he can tell you a little bit more about this. But I used to have a lot of trouble—I couldn't write checks on the deposits I'd already made until I'd received notification that the checks had been cleared by the bank in the South 48. And yet, we have these 3-day rules and we had all of these things about payments at the time. We felt constantly harassed in trying to keep up with these rules of the Internal Revenue Service in dealing with an area that's so far removed from the banking circles that a lot of our payments came from as we received settlement. And particularly insurance drafts that you receive here in the practice and settlement of accident cases, they're all subject to collection. And yet, as far as our officers are concerned, they were deposited. As far as your records show, we've got to pay within 3 days, and it just does not work. It seems to me—I'd like to know that 3-day rule—when the $3,000 limit went in, and I hope you put it in the record. When did the $3,000 limit go in? $3,000 in, you know, in the 1930's was one thing. $3,000 today, in the commerce of a State that's running 25 percent to 50 percent higher than the rest of the country, is not sufficient. If it's $3,000 in Alabama it ought to be, probably, $5,000 here to be dealing with equity. And I don't think that the Internal Revenue Service has looked at us in that way, of both the isolation and of the level of——

Mr. COATES. Per capita income.

Senator STEVENS. Well, the level of a balloned economy that really is not any different than any other State except for the numbers.

Senator MURKOWSKI. The actual available purchasing power is not different.

Senator STEVENS. Yes.

Mr. COATES. The FTD requirements, there are three different categories; accumulations of up to $500 for an entire quarter may be filed with the return or deposited at the end of the quarter. If accumulations fall somewhere between $500 and $3,000 they may be filed at the end of the month, by the 15th day of the following month. Where we get into the 3-day rule is when we have withholding tax accumulations that exceed——

Senator STEVENS. Anything over $3,000, isn't it?

Mr. COATES. Exceeds $3,000. And there's a period of eight dates in a month, and if you have accumulated, in withholding trust funds more than $3,000 by any of those dates then you have 3 banking days to deposit it. And it goes on then until the next $3,000 is accumulated. You may have to make eight deposits in a month if your company is that large and the trust funds that are being withheld are that great, or you may have to make one or two depending on when you go over the $3,000 figure, that triggers the deposit requirement. But that is a 3-day requirement.

QUESTION PARTNERSHIPS

Senator **STEVENS**. What about Dr. Lundquist's partnership? Having been a member of several legal partnerships and wandered at ease between—from one to the other, I was sort of amazed to hear that he had a liability for a medical partnership after he had left.

Mr. **COATES**. Senator Stevens. I'm—I have no explanation for that one, and we don't have the facts. We're going to get the facts. And Dr. Lundquist did file a waiver. But I have no idea of why he would have to pay income tax on partnership distribution when he isn't even a member of the partnership.

Senator **STEVENS**. Well, he had been, but apparently he hadn't notified you.

Mr. **COATES**. He had been, but according to Dr. Lundquist he was not at that time.

Senator **STEVENS**. But I never notifed the IRS until we filed a return. None of us would notify the IRS until we filed a return the next year that we're in a different partnership.

Mr. **COATES**. I'm going to hazard a guess that it wasn't because there wasn't notification. That there was some other reason that that partnership income was tacked to Dr. Lundquist in those 3 years.

Senator **STEVENS**. All right.

Mr. **COATES**. I'd like to answer one more, because Senator Murkowski pretty much indicated that he was going to look for an answer on this one, and I'm speaking, now, of Mr. Mathwig on the airplane tax, the $18 refund.

Mr. Mathwig had paid the tax in advance. The statute was repealed during the year. Only one quarter or $6 of the tax applied; the balance of $18 is due Mr. Mathwig, and I'm—I understand now that he's going to receive that refund very shortly.

Senator **MURKOWSKI**. Thank you. Do you have any other that are appropriate to comment on?

Mr. **COATES**. They say that Mr. Lebert's case is in a docketed status right at the present time. He has petitioned the Tax Court and it's in a docketed status.

There are two issues involved; attorney fees and contributions, so I wouldn't hazard a guess on how that one will turn out. But it is being adjudicated by the Tax Court right at this time.

Senator **MURKOWSKI**. Mr. Porter? Is there any—that was the gentleman that——

Mr. **COATES**. We don't have the facts at this time, Senator Murkowski, on Mr. Porter, but he has signed waivers and we will provide the facts for the record on Mr. Porter.

Senator **MURKOWSKI**. Mr. Lundgren's situation with the——

Mr. COATES. On the Lundgren situation——

Senator MURKOWSKI. Seven months to get his return of $55,000——

Mr. COATES. What really happened in that situation, there was an examination covering several years, Senator. Some of the years had overassessment. Some of the years—one particular year had a deficiency.

The revenue agent in a case of that type has an obligation to examine all the years, whatever the amount may be, whether it's overassessment, whether it's deficiency. The agent had all the information. He should have gone ahead and examined all the years that were involved. All we can say is, in that particular case, that we were at fault. That entire case should have been examined as a package and there should have been one net overassessment or deficiency. As it turned out, Mr. Lundgren paid the deficiency and then several months later got the refunds that were due him. That should have all been handled in one simultaneous transaction.

Senator STEVENS. Yes. I should think it would be able to be done on a computerized basis. I don't understand why it's not there.

Mr. COATES. It should not be a problem. Although this was a—there were amended returns, there were carrybacks, there were a lot of situations in this particular examination, but the revenue agent should have handled it all in one examination.

Senator STEVENS. Well, I don't want to prolong the hearing now, but I want to ask the chairman if, when we get back to Washington, we can have a followup after we've reviewed some of these responses that you're going to give.

Again, I'm looking to try and see if we can get some understanding of the procedures and how they impact us here, and maybe they impact people throughout the country the same way, but to try and see if we can't devise some procedures that won't cause the antagonism that's apparent in our State. And I would hope that we would be able to do that, Mr. Chairman.

Senator ABDNOR. Why, I think we should—certainly will, and probably with—maybe a situation occurs more here than other States. I'm sure this could be repeated in a lot of places around the United States. And maybe if we worked at doing a little better job from both your end and our end, why, maybe we could smooth things over a little and make a—make it a little more accessible, not only to the taxpayers, but a little more understanding on our parts would clear up a lot of problems.

Mr. COATES. Mr. Chairman, we would be pleased to continue this dialog with staffs or whatever we can do even back in Washington to a——

Senator ABDNOR. I think once we get the record printed up, we can back to memory some of the points that's been covered—it's awfully easy to forget one witness to another, even when you make notes—we could have a better exchange. And you will be available, I'm sure.

Mr. COATES. Certainly.

Senator MURKOWSKI. Mr. Chairman, I have just a couple of observations, if I may. Yesterday, in Anchorage, we had a good discussion on what was generalized, at least in some aspects, as a higher number of seizures and attachments occurring in Alaska in proportion to some other States. Also raised was the question as to whether that was because of higher salaries here and the fact that the recoverys, theoretically, were greater. The offsetting costs, of course, to the Government is proportional in respect to the overhead necessary to carry IRS personnel and so forth, so you wonder, really, where you're equating.

Also, the proportional number of personnel agents and various other specialized grades per capita was also questioned in relationship to whether, in reality, we have a higher number or not. And I think it's a general consensus that we probably do. And you indicated that the budget was going to be reduced somewhat and there would probably be fewer agents in Alaska.

ACTIVITIES OF FAIRBANKS OFFICE

My last point is not an observation, but a question, and I'm concerned with the Fairbanks office and the manner in which the reporting procedure is in place. And my question is, in the event an inquiry should be directed to this office, and I'm talking about a general inquiry, and the individual doesn't feel they get the satisfaction that they desire and they request to see the person in charge, and then they are put, probably, to a supervisor and lastly they want to talk to the Fairbanks Manager, my question is, is there somebody they can talk to?

Mr. COATES. Yes, sir, there certainly is, Senator Murkowski.

Senator MURKOWSKI. Here in Fairbanks?

Mr. COATES. We only have one manager in the Fairbanks office. He's an Examination Manager, but he is also—he wears sort of two hats. He's an Examination Manager and he's the Director's representative of the Fairbanks office.

Senator MURKOWSKI. So he's the Fairbanks Office Manager?

Mr. COATES. So call him the Fairbanks Office Manager and you're right on the mark.

Senator MURKOWSKI. Maybe it would be better if we both called him that.

Mr. COATES. He is available if somebody comes in, no question about it and——

Senator MURKOWSKI. Is that understood among the personnel in the Fairbanks office, that he is, in effect, the Fairbanks Office Manager?

Mr. COATES. Yes, sir. Yes, sir. And let me——

Senator MURKOWSKI. And when the public makes an inquiry, he's ultimately available?

Mr. COATES. Yes, sir.

Senator MURKOWSKI. In that capacity as the Fairbanks Manager? He can relate to the field people that work under him?

Mr. COATES. The only people who directly work under him are the examination people, but for all intents and purposes, the administration of the Fairbanks office, that gentleman is charged with the responsibility by this director.

Senator MURKOWSKI. OK. Now, the people that run the office 3 days a week, they report to him, is that right?

Mr. COATES. The Taxpayer Service people?

Senator MURKOWSKI. Yes.

Mr. COATES. That's the people that are in 3 days a week. He is not their immediate supervisor, but he has the responsibility——

Senator MURKOWSKI. No, but does their immediate supervisor report to him?

Mr. COATES. No.

Senator MURKOWSKI. So what you're telling me, then, is the office is open 3 days a week and those people who work in tax or customer service or whatever you call it do not report to any head in Fairbanks. Yes or no.

Mr. CARLSON. Not directly. However——

Senator MURKOWSKI. Well, that's no then.

Mr. CARLSON. The Director's representative would be responsible for replacing the person who is working in the taxpayer service area if that person was vacant or if the place was vacant for that day; the person became sick or something like that. It would still be his responsibility to supply someone to service the taxpayer service counter during those 3 days that the office is advertised to be open.

Senator MURKOWSKI. Well, I just would make a suggestion that you take a look at that system and see if it's not more workable to have the personnel that are responsible for public service in the 3 days that the office is open responsible to somebody in the Fairbanks office; reporting to somebody in the Fairbanks office, because I think you have an unworkable, impractical, situation where you can't provide the public with a service that they're entitled to. And to change it all you have to do is have them report to someone designated head of the Fairbanks office.

Mr. COATES. Senator, if a taxpayer appears at the Fairbanks office and feels they have been harassed, abused, mistreated, given incorrect information, whatever it may be with respect to that taxpayer service program, this director's representative would certainly be available to hear what they had to say and would have the authority to take whatever corrective action would be necessary. But the lines of organization, the immediate supervisor of these people in the taxpayers service operation is in Anchorage.

Senator MURKOWSKI. I can tell you, I've run 17 banks around this State and unless you have a manager in each one you can't do it. And to suggest that you can try and serve the public down here and not have them reporting to somebody in this office, I think, is—you just can't get there from here.

Mr. COATES. Administratively, they do.

Senator MURKOWSKI. I'm not going to belabor the point. I think I made my observation.

Senator ABDNOR. We have one more witness here before we close. And again, Mr. Coates, once we get the record compiled we'll have a little more of a direction in what we're seeking here so——

Mr. COATES. We would welcome the opportunity to sit down with you after we have the facts, too, in a lot of these cases, Senator, and be able to relate those too—with you.

Senator STEVENS. Well, we thank you for coming. The IRS didn't have to do what it's done, and volunteering to come listen to the testimony on the level of yourself and Commissioner Egger and being willing to respond on the record to some of these statements that have been made, again, you didn't have to do that either, and

I think the fact that you have shows an attitudinal change that's very good as far as I'm concerned. I've never seen an agency, not only yours, but I've never seen any agency do this before in the time I've been in the Senate, so I thank you, personally, and I think the committee as a whole thanks you for this approach.

Senator MURKOWSKI. I would join in that. You've been very cooperative and have certainly made every attempt to respond in very limited time to the inquiries, and I thought you did remarkably well.

Senator ABDNOR. Thank you very much. Mr. Steve Cooper. You go right—proceed, Mr. Cooper.

STATEMENT OF STEVE COOPER

Mr. COOPER. Thank you. I appreciate the committee's having asked me to speak for just a minute.

Senator STEVENS. You asked to speak, Mr. Cooper. I want to say on the record I think it's a mistake. But you've asked to speak and we've willing to listen to you on that basis.

Mr. COOPER. I'm assistant U.S. attorney here, assigned to the Fairbanks office. I only wish to speak for one purpose, and that is to correct the record that's been made here today. I understand this record is going to have wide circulation, and I think it should, but it should also be correct.

And this may seem like a narrow incident. I intend only to speak on the question of the seizure of that Volkswagen in 1979. The reason why it's important to zero in on that incident is because that incident has been, perhaps, the spearhead of a wide-ranging public feeling about abusive practices by the Internal Revenue Service.

I'm not qualified to say whether there have been abusive practices by the Internal Revenue Service elsewhere, but to use this incident as the starting point and the big example is a great mistake, because there was only one abuse that occurred in that case, and that was on the side of the taxpayers, themselves.

I got into this matter because the Internal Revenue Service had first seized the vehicle by—pursuant to procedures which I've been advised were entirely lawful. And they came to me after a confrontation had developed, and they stated to me, that in the process of attempting to seize this vehicle they had permitted the owners to retrieve personal belongings from the vehicle. Now, you heard a version of it today which omits what happened thereafter and which is a crucial fact, and that is, that instead of simply retrieving personal belongings from the vehicle, the owners got into the vehicle and immediately closed and locked the doors and stayed there in an attempt to recover the vehicle forcibly from the possession of the Internal Revenue Service.

They were shown the notice of seizure at that time. They were advised that it was a felony offense to do what they had done, and asked to leave the car peaceably. And after negotiations went on for some time in that setting the occupants of the vehicle, the taxpayers, indicated to the Internal Revenue agents outside of the vehicle, we will get out of the car if you will get a court order. Now, it was at that point that the revenue people came to me and said, "We need a court order. What shall we do?" And they also called their own headquarters in Anchorage and possibly elsewhere and were advised that they should not obtain a court order, because it was not either necessary or proper to obtain a court order to accomplish an ordinary seizure of a vehicle, and yet they were not given other adequate guidance. So my advice to them was, we'll get a court order, but the only one we can get is a search warrant. And a search warrant is based on the fact that a crime has been committed, and that evidence of that crime needs to be seized. The crime had been committed, because an attempt at forcible rescue of the vehicle had been undertaken, and so I authorized the issuance of a search warrant. That went before a U.S. magistrate. The U.S. magistrate examined the affidavit in support of this search warrant. He determined that the facts did amount to the commission of a felony offense and authorized the issuance of the search warrant.

The search warrant was issued. It was taken by the revenue agents out to the vehicle and shown to the occupants who were still sitting in the vehicle, and they said, "Here's your court order. Please get out of the vehicle." And they said, "No."

Ms. **Oliver**. Nothing was said.

Mr. **Cooper**. And so at that point then, the Internal Revenue officers decided that they had to somehow carry out this court order. Because now, against their own advice from headquarters and against their own wishes, they had gone and gotten a court order and were now under a command from the U.S. district court to seize that vehicle.

And they called a locksmith and they called—they wanted to see if the tow truck operator would haul the vehicle just a few feet inside the Federal compound, so they could isolate it and the problem would then go away; the people would get out and so forth. But they couldn't get the locksmith to work on it. They couldn't get the tow truck operator to move it as long as anybody was in it. And after pleading with the occupants for some time—I don't know the period of time involved—they finally resorted to the only thing they could do, which was to break the window and take over the vehicle.

Now, those are the true facts of this case, and unless they're known this thing is going to continue to occupy some kind of a No. 1 spot as an example of Internal Revenue abuse.

I don't have any special love for the Internal Revenue Service. I don't like to pay taxes. I've prosecuted their cases in this court and I've done so successfully and I'll do it every time there's a valid case. And I know how to judge from one case to another what—where the right and the truth lie. And all I'm saying is to this committee, that this record ought to be complete and ought to have these facts in it if people are going to use this as any kind of an example of the problem that they confront with the Internal Revenue Service.

I'd be happy to answer any questions if there are any.

CONCLUSION OF HEARING

Senator **Stevens**. No. Thank you. No more questions.

Senator **Murkowski**. Thank you.

Senator ABDNOR. This is—this could go on. The meeting stands adjourned. Thank you.

[Whereupon at 5 p.m., Thursday, August 6, 1981, the hearing was concluded and the subcommittee was recessed to reconvene at the call of the Chair.]

IRS Response to Individual Tax Questions

This information presents IRS responses to witness testimony where witnesses signed waivers to permit disclosure of return information or where the issue was of a broad enough nature to allow IRS to speak to the issue at question.

[The responses follow:]

CASE REGARDING WILLIAM S. WOOLLEN

WITNESS: William Van Doren regarding William S. Woollen.
TESTIMONY REFERENCE: Page 9 (August 4, 1981).
ISSUE: Flight training expenses deducted as educational expenses in 1978 were disallowed due to reimbursement from the Veterans Administration (VA). At the time the expenses were incurred and deducted, IRS publications advised, based on Revenue Ruling 62-213, that deductible educational expenses are not reduced by the nontaxable benefits received from the VA. The disallowance was based on the retroactive application of Revenue Ruling 80-173.
RESPONSE: Revenue Ruling 62-213 is a two-paragraph revenue ruling which stated two facts: 1) benefit payments received from the VA are exempt from taxation and 2) section 162 of the Internal Revenue Code (IRC 162) provides that educational expenses are deductible under certain conditions. The revenue ruling then held that expenses for education, paid or incurred by veterans, which are properly deductible, are not required to be reduced by the nontaxable payments received from the VA.

Revenue Ruling 80-173 considers a situation where a taxpayer receives flight training and is reimbursed by the VA, under 38 U.S.C. section 1677, to the extent of 90 percent of the cost of the training. The benefit is in direct relationship to the expenditure. The revenue ruling then points out that, for other expenses deductible under IRC 162, a deduction is not allowed to the extent there has been a reimbursement because the taxpayer has suffered no economic detriment and has incurred no expense in making the expenditure to the extent of the reimbursement. The revenue ruling then provides that, if the training qualifies as deductible educational expenses under IRC 162, the deduction will be limited to the amount of the expenditure after reduction for the reimbursement by the VA.

Revenue Ruling 80-173 applies only to VA reimbursement payments made under 38 U.S.C. section 1677. Revenue Ruling 62-213 still applies to subsistence and educational allowance payments made by the VA under 38 U.S.C. section 1681. The latter payments are not reimbursements determined by reference to amounts actually expended for tuition and fees, but rather are in the nature of a living stipend determined without regard to amounts expended.

Revenue Ruling 80-173 distinguished and clarified Revenue Ruling 62-213; the new ruling did not provide for prospective only application of the postion on reimbursement payments under 38 U.S.C. section 1677. Therefore, the district correctly applied the technical position of the Service to the case.

Mr. Woollen has petitioned the Tax Court regarding the deficiency detemined on his 1978 return. Further comments are not made due to the possibility of prejudicing the litigation.

NOTE: The taxpayer's representative, under a power-of-attorney authorization, has signed a waiver to permit disclosure of return information for the tax periods 1978 and 1979.

CASE REGARDING MIYOKO KAUFMAN

WITNESS: William VanDoren regarding Miyoko Kaufman
TESTIMONY REFERENCE: Page 14 (August 4, 1981)
ISSUE: The IRS ignored a new representative employed by the taxpayers and issued a tax due notice of $17,900. Shortly thereafter, another assessment and notice for

the same years was issued by the Service for about $1,800. These two notices caused confusion. As a result, the taxpayers are forced to make payment of the assessed liabilities before they may exercise their appeal rights in the court system.

RESPONSE: The examination of Eric and Miyoko Kaufman's 1975 and 1976 income tax returns involved two separate, distinct taxes—income tax and Social Security Tax (FICA). As the examination progressed, the major question became the taxpayer's failure to report tip income received during the years. For 1975, the amount of unreported tip income disclosed by the examination was greater than $9,000; for 1976, it exceeded $8,000.

By way of background, had the tip income been correctly handled during these years, the amount of the tip income would have been reported to the employer each month that the tip income exceeded $20. The employer would have withheld income tax and FICA tax and reported the income and taxes withheld on Form W-2. Since this was not done during the years in question nor was the situation corrected when the tax returns were filed, an examination adjustment was made for *both* the additional income tax due on the unreported tip income *and* the social security tax on tips not reported to the employer. The legal processing requirements of the two different taxes resulted in the two different notices ($17,919.21 for *income tax*, penalty, and interest; $1,757.43 for *social security tax*, penalty, and interest).

When no agreement between the taxpayer and Examination Division personnel could be reached, the case was processed "unagreed" and a 30-day letter was issued outlining the Examination Division's adjustments and the appeals procedures.

By responding to the 30-day letter, the taxpayer took the first step in the appeal process. An Appeals Officer met with Ms. Millie Dolan (the taxpayer's first legal representative) who proposed a settlement of 60 percent. This offer was rejected and replaced with an 80 percent proposed settlement by the Appeals Officer. In rejecting this offer, Ms. Dolan instructed the Appeals Officer to issue the "Statutory Notice of Deficiency". Such a notice begins the second step of the appeals process (it establishes a 90-day period for filing a petition with the Tax Court).

Later, the Appeals Officer received a new power of attorney appointing Mr. VanDoren and canceling the authority previously given to Ms. Dolan. In a phone call to the Appeals Officer, Mr. VanDoren was advised of the case's closing. He was also told an attempt would be made to retrieve the case before issuance of the statutory notice. When the Appeals Officer found that the notice had already been issued, Mr. VanDoren was called and notified. Additionally, he was advised of the previous settlement attempts with Ms. Dolan. Mr. VanDoren stated that Ms. Dolan had not advised the taxpayers of the settlement proposals.

At this point, the two tax elements of the case become important. Legal processing of this case requires a separation of the two deficiency amounts. The income tax portion ($17,919.21) may be brought before the Tax Court before payment of the tax. However, the social security portion ($1,757.43) may be heard by the district court or Court of Claims only after payment of the tax. Therefore, when a disagreement between the Appeals Officer and the first representative (Ms. Dolan) still existed, two procedures resulting in two notices were followed. The Notice of Deficiency covering the income tax questions ($17,919.21) was issued, as Ms. Dolan had requested, and an assessment of the social security tax ($1,757.43) was made by the IRS Service Center in Ogden, Utah. This assessment of the social security tax in Ogden generated the billing notice in the amount of $1,757.43.

Both representatives discussed the tax issues with the Appeals Officer. The social security tax assessment by the Ogden Service Center took a short time to complete (billing issued April 14, 1980). The income tax portion could not be assessed for at least 90 days as explained in the notice sent out on March 3, 1980. This 90-day period is a requirement of law to give the taxpayer time to file a petition with the Tax Court. When no petition was filed, the Service properly assessed the income tax deficiency on July 22, 1980, and the billing notice was mailed.

The confusion arose when two notices were received. The Service attempts to avoid this confusion by fully explaining the tax issues and procedures during the Examination and Appeals conferences; by providing written explanations of the proposed adjustments and appeal procedures in the 30-day and 90-day letters; and, by identifying the tax years, type of tax, and amounts on the billing notices. In all cases where there is disagreement, the Service follows the established procedures to insure that taxpayers are informed of their rights and are provided an opportunity to exercise them.

NOTE: The taxpayer's representative, under a power-of-attorney authorization, has signed a waiver to permit disclosure of return information for the tax periods

1975 and 1976. The waiver is for Mrs. Kaufman only. Although she filed a joint return, the issue and response refer only to Mrs. Kaufman's tax information.

CASE REGARDING TONI (McFARLANE) CARMICHAEL

WITNESS: William VanDoren regarding Toni (McFarlane) Carmichael
TESTIMONY REFERENCE: Page 16 (August 4, 1981).

ISSUE: The Taxpayer's former husband was found guilty of embezzlement and was later deported. Further, he failed to report the embezzled funds as income on their joint income tax return and claimed unsubstantiated business deductions. The IRS assessed the deficiency against both husband and wife. She was able to prove she was an "innocent spouse" as to the unreported income, but the law concerning an "innocent spouse" does not extend to the unsubstantiated business deductions. The witness believes the law should be changed.

In contesting the tax case against her, Ms. Carmichael incurred attorney fees and court costs. A recent law requiries the Government to pay attorney fees and court costs to a prevailing taxpayer in some situations, but not in this situation. In the witness' opinion this law should also be changed.

RESPONSE: As noted in the testimony, Ms. Carmichael's ex-husband, William J. McFarlane, was convicted of embezzlement in 1975. Further, an examination disclosed that the embezzled funds were not reported on the McFarlanes' joint tax return filed for 1975. Thus, the Service determined the McFarlanes owed additional tax, and penalties, on the unreported income and unsubstantiated business deductions.

The unreported income of $26,498 was in excess of 25% of the gross income reported on the jointly filed 1975 return. A 25% omission of income is one of the requirements of the "innocent spouse" provision of the law that was raised by Ms. Carmichael. Ms. Carmichael was also successful in proving that she had not benefited from the unreported income which is another requirement of the law. Therefore, having met the "innocent spouse" criteria, Ms. Carmichael was not required to pay the tax or penalties attributable to the unreported income. However, Ms. Carmichael has had to pay the tax attributable to the deductions which could not be substantiated. In addition, she had to pay attorney fees and court costs.

As of October 1, 1981, attorney fees will be awarded to prevailing parties under certain circumstances under Title II, "Equal Access to Justice Act," included in Public Law 96-481. This provision covers civil tax cases in the district courts and the Court of Claims, but not the Tax Court.

NOTE: The taxpayer's representative, under a power-of-attorney authorization, has signed a waiver to permit disclosure of tax information.

CASE REGARDING GARY BARNHART

WITNESS: William VanDoren regarding Gary Barnhart
TESTIMONY REFERENCE: Page 18 (August 4, 1981).

ISSUE: Mr. Barnhart asserts that amounts paid to the IRS by his employer, attributable to his Arctic Incentive Compensation, should be credited toward his income tax liability.

RESPONSE: Mr. Barnhart failed to report certain income received from his employer on his Federal income tax returns for the years 1975 through 1977. This income, designated as Arctic Incentive Compensation, was not included on the Form W-2, Wage and Tax Statement, issued to Mr. Barnhart by his employer nor was any income tax withheld from these payments by the employer.

Mr. Barnhart was examined by the IRS with respect to the amount of Arctic Incentive Compensation received. His gross income was increased by the amount of the payments received because Section 61 of the Internal Revenue Code defines gross income as all income from whatever source derived. In all cases, the employee is responsible for payment of tax on his or her income subject to taxation.

Mr. Barnhart states that since his employer had been audited and paid tax on the amounts which the employer failed to withhold, he, Mr. Barnhart, should not be held liable for the tax because this would mean that the tax was, in effect, being collected twice.

Mr. Barnhart's position that he should not be held liable for his income tax on his incentive pay is not correct. The income he received and its tax consequence must be reported by him whether covered by withholding or not. The examination of his returns and the adjustments made simply placed him in the position he would have been in had the taxes been withheld and the income been reported correctly on the original return.

While we cannot speak to the tax situation of Mr. Barnhart's employer, in general, the Code states, under section 3403 and the regulations thereunder, that every employer who is required to deduct and withhold income tax under section 3402 from the wages of an employee is liable to the Government for the payment of the withholding tax *whether or not the employer withholds such amounts from the employee's wages.*

Provisions exist to prevent double payment of tax. If the employee subsequently pays or had previously paid tax on the amounts the employer failed to withhold, the law provides a means whereby the employer may seek relief. Section 3402(d) and regulations section 31.3402(d)-1 state, in pertinent part, that if the employer fails to withhold the income tax from the employee and subsequently the income tax is paid to the Government by the employee, the Government will not collect the withholding tax from the employer. Also, the employer will not be relieved of such liability unless the employer can show that the income has been *paid* by the employee.

The IRS has procedures by which employers may request relief from payment of income tax withholding by showing that the employee has paid the income tax liability. This procedure is designed to assure that tax due is not collected twice where it can be shown that the employee had met his or her liability.

Further, the Internal Revenue Code requires that corrected Forms W-2 be given to employees outlining the revised wages. This is intended to arm the employee with the information necessary to file an amended return if needed. We will review our administrative procedures to ensure that examiners are reminding employers of this responsibility.

NOTE: This response is limited to the tax periods 1975 through 1977 as covered by a waiver to disclose tax information signed by the taxpayer's representative under a power-of-attorney. Accordingly, we are not able to comment on other tax periods.

CASE REGARDING PHILIP LOCKWOOD

WITNESS: William VanDoren regarding Philip Lockwood

TESTIMONY REFERENCE: Page 19 (August 4, 1981).

ISSUE: The IRS held claims for refund, resulting from a 1976 net operating loss, for 2½ years, then asked the taxpayer to use another form for filing the claim which was then disallowed because the statute of limitation expired for 1976.

RESPONSE: (General) According to the testimony, Mr. Lockwood operated a small business in Anchorage for many years. In 1975, 1976, and 1977 (the tax periods covered by the waiver) the income and expenses from this business were reported on Schedule C (Profit or Loss From Business or Profession) attached to his individual income tax return.

The 1975 return, as filed, reported a taxable income from all sources in excess of $17,000 while the two subsequent year returns (1976 and 1977) both reflected losses (negative taxable income). When such loss situations occur (the return shows a negative taxable income), the taxpayer must look to IRC 172. This provision allows the taxpayer some relief by letting him offset the profits of one year with the losses of another. Generally, this is accomplished by adjusting the negative taxable income of the loss year for certain personal items. The resulting figure (essentially losses from a business, casualty, and-or sales of business property) may then be carried back to each of the 3 preceding years and carried forward to each of the 15 following years until it is used up. Further, at the election of the taxpayer, the loss is not carried back. Rather, it is carried forward only. The only two limitations on this election are that the taxpayer must attach a statement to the loss year return showing that he/she is foregoing the carryback and the election must be made by the due date of the loss year return (including extensions). Once this carry forward election is made, it cannot be changed.

The taxpayer's difficulties arose from the interplay of the net operating loss provisions, the timely filing requirements for his original returns and claims for refund, and the statute of limitations. A more detailed explanation of the taxable events and the established Service procedures used in processing the claims is shown below.

RESPONSE: (Specific) *The taxpayer's 1975 return* was filed timely on July 25, 1976 (within the period granted by an extension), and reflected taxable income of $17,519 with an income tax liability of $3,602. *His 1976 return* (prepared by a Certified Public Accountant) was filed delinquent on August 8, 1977 (no extension was requested), and reflected a net operating loss subject to carryback of $70,622 and an unused investment tax credit of $71. Additionally, the delinquent 1976 return contained an election to carry the net operating loss forward under the provisions of section 172(b)(3)(C) of the Internal Revenue Code. *The 1977 return* was filed 16½ months delinquent on August 31, 1979 (an extension had been granted to October 15, 1978). This return also reflected a net operating loss subject to carryback in the amount of $21,698 and unused investment tax and new jobs credits of $533 and $10,203, respectively. This return also contained an election to carry the net operating loss forward under the provisions of Section 172(b)(3)(C) of the Code.

1977 NOL

On September 11, 1979, the Ogden Service Center received an amended 1975 return, Form 1040X, reflecting only the carryback of the unused credits from the 1977 (not 1976) return. The amended return was prepared by a CPA firm other than the CPA who prepared the 1976 return. On March 28, 1980, the Ogden Service Center wrote to the taxpayer disallowing the 1975 claim because the 1977 net operating loss must be carried back to 1975 prior to the carryback of the unused 1977 credits. Also included in the March 28, 1980 letter was a notification that the taxpayer had two years from the date of the notice to bring suit for refund of the disallowed claim. Under section 6511(d) of the Code (as it then read), the period of limitations for filing amended returns to carryback the 1977 net operating loss and unused credits expired on April 15, 1981, approximately 12 months after the mailing of the notice of claim disallowance. However, because of the effect of the 1976 net operating loss, the question of the expiration of the statute for 1977 is moot.

1976 NOL

On September 8, 1980, the Ogden Service Center received a second 1975 amended return, Form 1040X, reflecting the carryback of the 1976 net operating loss. This amended return was prepared by the same CPA firm that prepared the amended return for 1975 that was filed on September 11, 1979. On December 10, 1980, the taxpayer was notified in writing that the claim (1976 loss carried back to 1975) was not allowed because the statutory period for filing the claim had expired approximately 6 months earlier (April 15, 1980). The taxpayer had filed a timely suit for refund on the disallowance of this claim.

The election to carry a net operating loss forward must be made on a timely filed return, plus extensions. As the taxpayer's 1976 return was delinquent, the taxpayer made an invalid loss carry forward election and, therefore, he must carry the loss back to the three preceding years before any carryover is allowable.

SUMMARY: The taxpayer filed a delinquent 1976 return electing not to carry the 1976 net operating loss back to the three preceding years. Since the election was invalid, the tax paid for 1975 could have been recovered immediately by the filing of a claim or application for tentative allowance.

Mr. VanDoren stated in his testimony that a ". . . claim was duly filed by the CPA for the net operating losses for 1976 which carried back to 1975 and then forward to 1977. Some two and a half years later, the IRS finally notified the taxpayer that the form used was deficient and he'd have to file it on another form." IRS records indicate that only one claim was filed to carryback the 1976 loss to 1975, the amended return filed on Form 1040X on September 8, 1980, and disallowed by the IRS on December 10, 1980.

Mr. VanDoren also stated that the IRS has denied the taxpayer an opportunity to ever have the merits of his claim presented anywhere. Our records show the taxpayer has filed a timely suit for refund and Mr. VanDoren is representing the taxpayer in court.

Finally, Mr. VanDoren stated that the IRS is not required to notify a taxpayer who has a pending claim for refund (that is disallowed) that a refund suit must be brought within two years. Quite the contrary, the Notice of Claim Disallowance (a registered letter sent to the taxpayer) contains the reason for the disallowance and informs the taxpayer that if ". . . you wish to bring suit or proceedings for the recovery of any tax . . . for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims, . . . within 2 years from the mailing date of this letter."

In summary, Mr. Lockwood would have been eligible for refunds in one or more of the tax years prior to 1976, if he had filed a timely claim to carry back his 1976 net operating loss. But he did not. Nevertheless the law requires his taxable income for years prior to 1976 to be reduced to zero even though he is not entitled to a refund.

Turning to tax year 1977, neither the operating losses nor credits could be carried back as Mr. Lockwood attempted to do because his taxable income was already zero as required by law and the 1976 losses.

For the future, both the unused portion of his 1976 net operating loss and all of his 1977 losses and credits are still available for use as a "carry-forward" in years after 1977 assuming properly and timely filed returns for years subsequent to 1977.

In this case, we can find no instance where the IRS failed to follow established procedures in processing the claims or in following the requirements of the Code and regulations.

NOTE: This response is limited to the tax periods 1975 through 1977 as covered in a waiver to disclose return information signed by the taxpayer's representative under a power of attorney. Accordingly, we are unable to comment on other tax periods.

CASE REGARDING NORMAN B. GRANT, JR.

WITNESS: Norman B. Grant, Jr.

TESTIMONY REFERENCE: Page 22 (August 4, 1981).

ISSUE: Taxpayer was an officer of a corporation against which the IRS assessed additional employment taxes. The corporation went out of business. The corporation's taxes were assessed against the taxpayer, plus a 100 percent penalty. The IRS went against this taxpayer for the corporation's taxes instead of the person who had filed the incorrect employment tax returns.

Taxpayer states his individual tax returns were audited for every year from 1965–1978. Such audits cause the taxpayer to pay accounting fees which are a burden to him.

Taxpayer states he was the victim of an extortion plot by former IRS employees.

Taxpayer states a former IRS employee has stated he has not filed an income tax return since 1976 because he knows how to get around the IRS.

Taxpayer fears reprisal by the IRS as a result of his testimony and expects his returns to continue to be examined for the next several years.

RESPONSE: If a corporation has willfully failed to collect or pay over employment taxes and such taxes cannot be collected from the corporation itself, the IRS may make an assessment against a corporate officer or other responsible person in the same amount as the amount required to be withheld by the corporation. Although the assessment against the individual is called a "100 percent penalty" assessment, the amount assessed against the individual is not a doubling of the corporation's liability.

A "100 percent penalty" assessment may be made against more than one corporate officer or responsible person. This does not mean the IRS intends to collect the same tax several times. A payment or partial payment by the corporation or any one of the individuals serves to reduce the amount assessed against each one. Therefore, in such cases, the IRS will collect only the amount originally owed by the corporation. When the correct amounts have been paid, any remaining assessments will be removed.

We make every effort to be fair and equitable in our approach to collecting the 100 percent penalty and assure we do not collect more than we should from all the responsible parties. However, we will take a close look at the regulations and our procedures to see if there are changes we can recommend to assure that taxpayers are receiving equitable treatment. Section 6103 of the Code prevents disclosure of tax information among concerned parties in such cases. The Service cannot, as a result, discuss taxes collected from responsible officers. This may lead to suspicions among concerned parties that tax treatment is not equitable. We will explore possible legislative or administrative alternatives which might permit disclosure in these instances.

Mr. Grant was an officer and director of a corporation that was assessed additional tax as a result of an employment tax examination. When the additional tax liability was not paid, the delinquent account was given to the Collection Division for their investigation and necessary action. There, a determination was made that Mr. Grant was a responsible officer of the corporation and a 100 percent penalty assessment was recommended. After the appeals process was completed, a final determination was made by the Service and the penalty assessment made against Mr. Grant. In this instance the assessment was deemed warranted because of the corporation's failure to properly withhold the employment taxes required, its inability to pay when it ceased doing business, and a determination that Mr. Grant was a responsible officer of the corporation.

Later in the testimony Mr. Grant states that he has been audited for every year from 1965 through 1978. Service records prior to 1972 are stored in the Federal Records Centers and are not immediately available; therefore, we have limited our comments to 1972 and later years. For the more recent years, the transcript of Mr. Grant's account shows the following information:

RESULTS

Examinations:	*Deficiency (Refund)*
1972	$99.35
1973	2,724.54
1974	408.19
1975	709.50
1976	542.00
1977	[1] 3,301.00

[1] The 1977 return was examined because of a claim filed by the taxpayer. The 1978 and 1979 return have not been examined.

The Service realizes that examinations are costly to the taxpayers both in time and money. Therefore, in recent years, we have established procedures to avoid repetitive audits when our records reflect a recent "no tax change" or "small tax change" examination. However, none of Mr. Grant's returns would have met the repetitive audit criteria had they been in place during the years noted above.

During his testimony, Mr. Grant also related that he was the victim of an extortion plot by former IRS employees. On July 17, 1981, a former Revenue Officer and a former Revenue Agent (specifically a student trainee) were arrested by Alaska State Troopers for allegedly attempting to use their knowledge of the Service to have him investigated unless he released one of the former employees from a promissory note. The Anchorage District is fully cooperating with state officials in this case.

Finally, the Service reiterates the assurances given to Mr. Grant by the Chairman of the Subcommittee. There will be no harassment of the taxpayer as a result of his testimony.

NOTE: The taxpayer signed a waiver to permit disclosure of return information for the tax years 1965 through 1979.

CASE REGARDING DAN KELLMAN

WITNESS: Dan Kellman

TESTIMONY REFERENCE: Page 24 (August 4, 1981).

ISSUE: Whether or not the Internal Revenue Service is honoring the tax-exempt status of the Universal Life Church (ULC) in view of IRS' examination of Mr. Kellman's contributions to ULC.

RESPONSE: Mr. Kellman's testimony states that his individual tax returns for the years 1971, 1972, 1974, 1975, 1976, and 1977 have been examined by the Service. Our records relating to tax years before 1976 are not immediately available. However, our records do indicate that his 1976 return was examined.

In 1976, Mr. Kellman reported charitable contributions to a chartered church of the Universal Life Church. Further, upon examination of this return, a determination was made that the contributions were not allowable.

As more fully explained in our response to Mr. Valiente's testimony, the examination focused on whether the contributions shown on the return satisfied the deductibility requirements of IRC 170 (the contribution was paid during the tax year to a church organized and operated exclusively for religious purposes and that no income inured to the private benefit of a person). The examination did not consider the tax-exempt status of the Universal Life Church of Modesto, the Church's religious beliefs or activities, or the church's right to ordain ministers.

After the examination determination that the contributions were not deductible, the case was processed for judicial review under the "S Case" procedures of the Tax Court (small cases with deficiencies under $5,000). The taxpayer then requested that his case be heard before the full Tax Court. This request was granted and the case was heard. District Counsel reports that the Tax Court has decided the case for the Service, but the decision has not yet been printed.

Mr. Kellman's income tax return for 1977 was also examined for the contributions reported on the return. As before, he could not agree to the disallowance of the contribution and requested a hearing before the Tax Court. The hearing has not been held. The case was removed earlier from the docket list at the request of IRS Counsel because the court had not rendered its decision on 1976 at that time. It is probable that the Tax Court will hear the 1977 case in June 1982.

NOTE: This response is limited to the tax periods 1971 through 1980 as covered by a waiver to disclose return information signed by the taxpayer.

CASE REGARDING HILLARD T. ROACH

WITNESS: Hillard T. Roach
TESTIMONY REFERENCE: Page 43 (August 4, 1981).

ISSUE: The taxpayer claims corporate withholding and social security tax returns were not filed timely because of the hiring of a new bookkeeper and that credits in his account have not been refunded. The taxpayer thinks Collection Division personnel treated him unfairly and discourteously.

RESPONSE: We cannot discuss any corporate matters relating to Mr. Roach since his waiver does not mention the name of a corporation. We cannot discuss individual tax matters relating to 1978 since his waiver does not include this tax year.

After repeated contacts from IRS personnel, Mr. Roach filed his individual income tax return for 1976 in December 1980. Credits available in his account were used to satisfy the tax liability shown on the return. Mr. Roach lost his refund, however, as the statute of limitations for claiming a refund had expired. As of January 1982, Mr. Roach had not filed returns for 1979 and 1980 and had no credits available for those years. Mr. Roach initiated bankruptcy proceedings in early 1980 and his petition is still under review.

Mr. Roach was difficult to contact throughout our dealings with him. He was argumentative and evasive. Because of his confusion between business and individual tax matters, we had a difficult time getting him to understand his liabilities and credits. Our people made every effort to help him straighten out these matters.

NOTE: The taxpayer signed a waiver to disclose his return information for the tax years 1976, 1977, 1979 and 1980.

CASE REGARDING DANIEL EMANS

WITNESS: Daniel Emans (Stan Simpson appeared on behalf of)
TESTIMONY REFERENCE: Page 54 (August 4, 1981).

ISSUE: In January 1980, Mr. Emans was acquitted on two charges of filing false W-4's claiming 34 and 36 allowances. Thirty days after he was acquitted the Internal Revenue Service instructed his employer to withhold taxes as a single person with one allowance rather than 36 allowances as claimed on his W-4 form. Emans contends that since the federal court determined that he was entitled to 37 (testimony in the hypothetical was actually 39) allowances on his W-4 form the Internal Revenue Service should not arbitrarily say he is entitled to claim only one.

RESPONSE: In the spring of 1979, Mr. Emans filed a W-4 claiming 34 allowances. On May 15, 1979 he filed another W-4 claiming 36 allowances. He was subsequently indicted on two charges of filing false withholding allowance certificates. In January 1980, Mr. Emans went to trial on these charges. In the testimony during the trial the defense argued that the government failed to show that Emans was not entitled to the allowances claimed.

During the trial, defense counsel asked for a demonstration of how we calculated the number of allowances that were permitted. A hypothetical question was posed to the Internal Revenue Service witness concerning a case where there was $40,000 of itemized deductions and how would the formula work. Our witness answered the hypothetical stating 39 allowances would be allowed. The government was unsuccessful in its arguments, and charges were dismissed by a direct verdict of acquittal. The IRS regulations which went into effect in early 1981 require that an employer send to IRS any W-4 statements where more than 9 allowances have been claimed. The IRS then searches its files to determine whether there is probable cause for a taxpayer to be entitled to the number of allowances he or she has claimed, and if the file does not so indicate, the employer is directed to permit only one allowance until such time as additional allowances have been substantiated by the taxpayer.

Mr. Emans has not substantiated the number of allowances he is claiming and has not filed an income tax return for 1980. The outcome of his previous trial on criminal charges has no bearing on any civil determination.

NOTE: Waiver received only for 1980 and 1981 tax years.

CASE REGARDING DONALD PALLETT

WITNESS: Donald Pallett
TESTIMONY REFERENCE: Page 62 (August 4, 1981).
ISSUE: Mr. Pallett states he has done extensive research on the requirements of who is required to file an income tax return. He further states that his mission is to educate the government and the general public on those requirements.
RESPONSE: On March 17, 1981, a criminal information was filed in the U.S. District Court in Portland, Oregon, charging Mr. Pallett with two counts of willful failure to file individual income tax returns for the years 1977 and 1978. On May 14, 1981, a jury found Mr. Pallett not guilty on both counts.

A citizen or resident of the United States must file a Federal income tax return if he or she meets certain filing requirements. These requirements relate to amount of income earned, marital status, and age. Even though Mr. Pallett was found not guilty of willfully failing to file a tax return (for criminal purposes), this does not relieve him of the requirement to file (for civil purposes). The Examination Division in Portland currently has an assignment for the civil settlement of Mr. Pallett's tax returns for the years 1977 and 1978.

Mr. Pallett has not filed income tax returns for 1979 or 1980. It is a standard and normal IRS Examination policy to request from any taxpayer currently under examination any and all due returns not filed for subsequent years.

NOTE: "Open" Waiver received from Mr. Pallett on 8-3-81.

CASE REGARDING DR. RICHARD PAULI

WITNESS: Dr. Richard Pauli
TESTIMONY REFERENCE: Page 83 (August 4, 1981).
ISSUE: A request containing a lengthy list of questions concerning the examination of the taxpayer's 1976 joint income tax return was not answered timely. The request was submitted under the provisions of the Freedom of Information Act.

The examination of the 1976 return continued while the Freedom of Information (FOI) request was pending. Also, the IRS extended the examination to the 1977 and 1978 returns during the period when an appeal was pending for a withheld document that was not furnished pursuant to the request.
RESPONSE: The examination of the Paulis' 1977 joint income tax return began in May 1979 and focused on a $163,500 deduction for "Professional Services" paid to a business trust organization. Approximately five months later (September 1979), the examination was extended to include their 1978 income tax return. One of the purposes of the 1978 examination was to address a $441,447 deduction for "Management Fees" paid to a trust.

Because no meeting could be arranged with the taxpayers or books and records examined, an "unagreed" examination report disallowing the deductions noted above was prepared in October 1979 based upon the information available to the IRS at that time. The primary issues for both 1977 and 1978 were the use of foreign and domestic double trusts that avoid U.S. taxation. Neither the 1977 nor 1978 issues have been resolved and the cases are currently before the Tax Court (Docket No. 5104-81).

In addition to the 1977 and 1978 income tax issues discussed above, the taxpayer raised an issue that an examination should not proceed while a FOI request is pending. Current procedures do not require suspending examination activity while a request is pending. Rather, the procedures suggest that both items (the examination and request) should proceed separately under normal procedures in order that the goals of each may be achieved.

NOTE: The waiver to disclose tax information signed by Felicia A. Pauli covers the tax years 1977-1980. Therefore, the IRS is prohibited from commenting on any aspect of their 1976 income tax return, including the FOI request regarding that return.

CASE REGARDING GLENN A. HUFF

WITNESS: Glen A. Huff.
TESTIMONY REFERENCE: Page 82 (August 4, 1981).
ISSUE: A local title company would not recognize a property transaction involving a business trust organization of which the taxpayer was an executive trustee.
RESPONSE: The taxpayer stated that a title company would not recognize a business trust organization as a legal entity because such entities are not recognized by

the IRS. The title company apparently referred to a newsletter published by the IRS in July 1979 as the basis for their determination.

It is possible that the title company misinterpreted the thrust of the newsletter. The July 1979 newsletter points out that the IRS considers certain types of trusts as questionable for income tax purposes.

The IRS does not determine what is a legal entity within the State of Alaska. The fact that the IRS may not recognize a trust for income tax purposes has no bearing on its legality under state law. Further, the issue of foreign and domestic double trusts is under court consideration in other cases.

NOTE: This response is limited to the tax periods 1976 through 1980 as covered by a waiver to disclose return information signed by the taxpayer.

CASE REGARDING JOE VALIENTE

WITNESS: Joe Valiente.

TESTIMONY REFERENCE: Page 140 (August 4, 1981).

ISSUE: Whether or not the Inernal Revenue Service is honoring the tax-exempt status of the Universal Life Church (ULC) in its examination of Mr. Valiente's indivudual income tax returns.

RESPONES: Mr. Valiente's individual income tax returns for 1978 and 1979 reflected contribution deductions to the Universal Life Church for $1,600 and $15,022, respectively. Both of these amounts have been considered during the examination and are the subject of our requests for information.

The IRS has found, after examining tax returns of ministers of mail-order churches, that many are using their church charters and ministerial credentials solely as a devise to avoid paying income tax, and that their contributions are not deductible under IRC 170(c)(2). In many cases, these individuals have signatory control over their church bank funds and cause their church contributions to be used for their own personal living expenses. This is in violation of the IRC 170(c)(2) which provides that for a contribution to be deductible, the net earnings of the organization cannot inure to a private individual. Also, where a taxpayer has complete control over the use of the church funds and uses those funds to pay personal expenses, no gift has been made to the church.

Many cases containing these issues have been litigated in court with IRS' position being sustained. For exmple, in *Walker* v. *Commissioner,* T.C.M. 1978-493, the Tax Court stated that, "it would appear, in fact that [the] church is organized and operated merely as a tax scheme whose purpose, far from being religious, is to provide tax benefits to those who are willing to purchase deduction . . . ." The court concluded that "this court will not allow Section 170 to be subverted by those who would twist it to their own private benefit—regardless of the scheme or artifice by which it is attempted."

Similarly, in *Heller* v. *Commissioner,* T.C.M., 1978-149, the Tax Court determined that ". . . so far as we can discern the principal purpose of the church was to provide petitioner with a means for claiming deduction for charitable contributions which he immediately withdrew to pay his personal living expense. This private inurement, proscribed by Section 170(c)(2)(c) disqualifies his gifts to the church from being charitable contriubtions. Deductions for such contributions, therefore, must be denied."

Additionally, in examining the individual income tax returns of ministers, the IRS is *not* examining the tax-exempt status of the Church, the Church's religious beliefs or activities, or the Church's right to ordain ministers through the mail. Rather, the IRS is examining the tax returns of these ministers as individuals, separate and apart from their church affiliation. The returns are examined to determine whether the contribution deductions appearing on those tax returns, satisfy the deductbility requirements of the Internal Revenue Code. Generally, these requirements are:

(1) That the contribution was paid during the year;
(2) That no inurement took place in contravention to IRC 170(c)(2); and,
(3) That the church was organized and operated for religious purposes.

In abusive situations many taxpayers attempt to restrict IRS to verifying only that the first requirement has been met. Often, in such cases, ministers will present cancelled checks that reflect payments to their church. However, since these same individuals generally have direct or indirect control over these funds, cancelled checks are not conclusive.

In connection with the second requirement, it is generally necessary for IRS to inspect bank account information to determine if personal benefits were paid by the church to or on behalf of the individual. This inspection of bank records is done solely to determine the correctness of the *individual's* tax liabiity. Often, taxpayers attempt to deny the IRS's right to these records, since access to them might reveal that the individual benefited from the church funds. In such cases, individuals often attempt to use the First Amendment to shield themselves, and their records from the IRS.

In Mr. Valiente's specific situation, he has refused to allow the IRS to review his personal bank accounts to determine whether inurement has occurred. Therefore, the IRS has issued three summonses to obtain the necessary records. On this point, the courts have recognized the burden of proof is on a taxpayer to show that no personal inurement occurred. For example, In *Pusch* v. *Commissioner,* T.C.M. 1980-4, the court stated, "Also, this record shows that petitioner had complete control over the bank account of the church and during the year here in issue used its funds as he saw fit."

"While petitioner stated that the amount he took from the church was only the minimum necessary to supplement his other income, his testimony was clear that he alone determined that amount. On the record as a whole, petitioner has failed to establish that none of the earnings of the church inured to his benefit."

In addition, it has been reported to the Service that Mr. Valiente made a statement to the effect that the only way to handle the IRS is with shotguns. He has also refused to answer questions concerning the church and the contributions shown on his returns. Treasury Regs. 1.170 A-1(a)(2)(iii) states that "Any deduction for a charitable contribution must be substantiated, when required by the District Director, by a statement from the [church] indicating whether the [church] is a domestic organization, the name and address of the contributor, and *such other information as the District Director may deem necessary.*" (Emphasis supplied.) The IRS may need this "other information" to verify the third requirement for deductibility; that is, that the church is organized and operated for religious or charitable purposes under IRC 170(c)(2). The burden of proof is clearly on Mr. Valiente, in his individual capacity, to show that the church is so organized and operated. Mr. Valiente has refused to answer questions in this regard and further states that the Service does not recognize ULC chapters even though the ULC in Modesto, CA has received tax exempt status.

In this regard, the fact that an organization receives a church charter from an existing organization does not guarantee that the contribution to that church is deductible. Subsidiary branches of a church do not necessarily fall under the parent church's tax-examption status. The following is an extract from *Basic Bible Church* v. *Commissioner,* 747C. No. 62. "Petitioner contends that as an auxiliary of the Basic Bible Church, it shares that organization's tax-exempt status."

"Petitioner analogizes its relationship to its parent church both to the United Methodist Church whose local churches are part of the whole church even while having a separate existence, and to the Salvation Army and its components."

"We find that petitioner is legally separate and distinct from its parent church. Though it subscribes to the beliefs of the Basic Bible Church, petitioner's charter specifically states that it is not under the management, direction or control of the parent church and therefore, the parent church is not liable for any debts, obligations, engagements entered into or liabilities of any kind or nature incurred by the auxiliary church. The same separation adheres to petitioner with respect to liability for the debts, etc., of the parent church."

"Because petitioner is legally distinct from the Basic Bible Church, petitioner must prove that it qualifies for tax-exempt status under sections 501(c)(3) and 501(a); evidence of the parent chruch's exempt status is immaterial to a determination of petitioner's qualification."

In summary, the IRS does examine tax returns for their contribution deductions and these include Examination of mail order ministers who may be using a church and its First Amendment guarantees to abuse the tax system. By examining tax returns, the IRS is not singling out the Universal Life Church itself or prying into its financial or religious affairs, including its right to ordain ministers. The IRS is, however, attempting to identify individuals who may have claimed deductions that are not allowable or who may use the church for the purpose of evading income tax.

NOTE: This response is limited to the tax periods covered by the waiver signed by the taxpayer (1978 and 1979).

CASE REGARDING DR. BELTON STEPHENS

WITNESS: Dr. Belton Stephens

TESTIMONY REFERENCE: Page 177 (August 4, 1981).
ISSUE: A credit for 1978, resulting from an amended 1978 return was not timely applied to a 1979 deficiency, causing a levy on the taxpayers' state income tax refund. Additionally, there was very little coordination between divisions in the IRS.
RESPONSE: The Stephens' filed their joint 1978 income tax return timely and paid the balance due with the return. In September 1979, the taxpayers' CPA firm discovered that an error had been made on the return and filed an amended return in October 1979, claiming a refund of approximately $25,100. In October 1980 (after the 1979 Return was filed), the 1978 original and amended returns were selected for examination and, with the exception of a small math error on the amended return ($14), they were accepted as filed in March 1981.

At the time of filing their 1979 return (April 15, 1980), the taxpayers had not received any notification of the status of their claim for refund for 1978. Since they had heard nothing, they claimed the anticipated refund from 1978 as additional tax payments on their 1979 return, reducing the balance due on that return to zero.

As the service center had no record of the approximate $25,100 "payment" from the anticipated 1978 refund being credited to their 1979 account, the taxpayers were billed for a balance due of $23,395 on their 1979 return, which included a $765 estimated tax penalty and $452 assessed interest. Four tax due notices were sent to the taxpayers; the final notice was sent on January 16, 1981. We are unable to determine whether Dr. Stephens responded to our earlier notices. However, Dr. Stephens did reply to the final notice in a letter dated January 19, 1981, stating that he was being audited and expected a refund which would satisfy his total tax liability. For reasons we cannot explain, his letter was not received by Ogden Service Center Collection personnel until March 30, 1981, and, in the intervening period, the Anchorage District served a notice of levy on the State of Alaska for the Stephens' state income tax refund. It seems to us there may have been a procedural lapse or alternatively some systemic problem which caused these delays and apparent failures in communication.

On May 8, 1981, Dr. Stephens called the Anchorage Collection office function about the levy on his state income tax refund. He stated that his 1978 examination had been completed and that he was going to have a credit of $25,112 which would satisfy fully his tax liability. Dr Stephens was asked to bring in a copy of his report of examination changes, which he did. Upon receipt of the copy of the examination report, the IRS immediately withheld further collection activity.

Dr. Stephens correctly identified the apparent lack of coordination, which we regret. Although we are not able to explain why the events occurred as they did, we believe this type of situation to be either a procedural lapse or a systemic problem which we intend to review. We are grateful to Dr. Stephens for bringing this problem to our attention. We intend to contact Dr. Stephens and request copies of the correspondence to assist us in resolving this problem.

NOTE: The taxpayer signed a waiver to disclose return information for the tax periods 1975 through 1980.

CASE REGARDING MERWYN C. SMALL

WITNESS: Merwyn C. Small
TESTIMONY REFERENCE: Page 186 (August 4, 1981).
ISSUE: The IRS is treating the gain on the sale of 30 rental units in six different buildings in 1977 as ordinary income instead of capital gain because the IRS determined the taxpayer was a dealer in real estate.

The IRS is delaying the completion of the 1977 audit and has extended the audit to 1978 before completing the 1977 examination.
RESPONSE: The examination of Mr. Small's 1977 tax return focused on rental income and expense and whether the gains on sales of real property were ordinary income or capital gains.

In the rental income and expense area of the examination, there were delays created by rescheduled appointments, requests for additional information, less than perfect records, and a change in examiners.

In the area of real estate sales a question often arises as to whether the gains (or losses) from real estate transactions are taxed as ordinary income from the sale of inventory items sold in the ordinary course of business or as capital gains. In Mr. Small's case, the preliminary determination was made that he was a dealer in real estate and the sales were made in the ordinary course of his trade or business. Thus, the gains were taxable as ordinary income. Mr. Small did not agree with this determination and his case is currently being considered by the Appeals Division of the Internal Revenue Service.

NOTE: This response is limited to the tax periods 1977 and 1978 as covered by the waiver to disclose return information signed by the taxpayer.

CASE REGARDING MRS. JOAN BECKDAHL

WITNESS: Mrs. Joan Beckdahl
TESTIMONY REFERENCE: Page 283 (August 6, 1981).

ISSUE: Lengthy audits for the years 1977 and 1978 resulted in a small amount ($151) of additional tax and excessive expense to the IRS and the taxpayer.

After excessive contacts between the taxpayer and IRS, and numerous audit reports regarding the issue of deductibility of union dues, it was proposed that the case be put into suspense pending settlement of a court case. The taxpayer paid the tax but did not sign the agreement form and, after issuance of a notice of deficiency, the case was scheduled before the Tax Court.

RESPONSE: Mr. & Mrs. Beckdahl filed joint income tax returns for the years 1977 and 1978 (both were examined). Records immediately available indicate their 1977 income tax return were examined during 1978 and resulted in a $252 deficiency. In June, 1979, the IRS abated $166 of their 1977 tax liability. Our records do not show what issues were considered during the examination nor why the abatement was made.

In February 1980, the taxpayers' 1978 return was selected for examination and they were informed that the examination would consider union dues and rental income and expenses. An initial interview took place on March 12, 1980, and the case was closed without agreement as to the deduction for union dues on May 30, 1980. The taxpayers were informed that only a portion of the dues were deductible. Litigation pending in another case was to determine whether any portion of union dues, paid by members of a union in Alaska and used to construct two recreational buildings, was deductible. The Union dues deduction issue is currently in litigation and is keyed to the case of Carl and Ruth *Briggs*, T.C. Docket 1473-78. The Tax Court found for the Government in 75 TC 465 (CCH Decision 37,506) in a decision filed December 30, 1980. The case was appealed by the taxpayers to CA-9 on February 11, 1981. The Commissioner's brief was received by Chief Counsel on July 23, 1981, and the taxpayer's brief was received on August 26, 1981. The case is still on appeal and has not yet been decided.

Further, the taxpayers did not agree to the proposed disallowance of the union dues and did not wish to have the issue placed in suspense pending the outcome of the litigation. Accordingly, their case was closed as "unagreed" and a notice of deficiency was issued. The taxpayers filed a timely petition with the Tax Court and the case was docketed.

In April 1981, District Counsel returned the case to Appeals for pre-trial settlement. The taxpayers were contacted and informed that an attempt would be made to resolve the case before trial. In June 1981, Appeals proposed a stipulation decision reducing the proposed deficiency to $65. The taxpayers paid the $65 but would not sign the stipulation agreement ". . . saying we agreed with it because we didn't." Thus, the case was returned to District Counsel for trial preparation—no date for trial has been set and the $65 payment was credited to the taxpayer's account as an advance payment of the pending liability of $110.

NOTE: This response is limited to the tax periods 1977 and 1978 as covered by the waiver to disclose tax information signed by the taxpayer.

CASE REGARDING DUANE A. MATHIS

WITNESS: Duane A. Mathis
TESTIMONY REFERENCE: Page 292 (August 6, 1981).

ISSUE: The taxpayer claimed IRS disallowed unsubstantiated deductions for tools and charity contributions on his 1977 individual income tax return; that IRS froze his bank accounts and levied on his wages; and that he did not receive notices. The taxpayer thinks it is difficult to get help from Taxpayer Service in Fairbanks since it is not open on Thursdays and Fridays.

RESPONSE: Although the Taxpayer Service office in Fairbanks is only open Monday through Wednesday, the Collection offices in both Fairbanks and Anchorage are open five days a week. Since Mr. Mathis testified that his days off were Wednesday and Thursday and that he lived in Fairbanks and worked in Anchorage, he had the opportunity to come into Taxpayer Service or one of our Collection offices to discuss his tax situation. The final notice sent to Mr. Mathis contained the address and telephone number of our Collection office in Anchorage.

Because we did not receive a response to any of our four notices to the Mathis' and their telephone number was not listed in the city directory, we served notices of levy on Mr. Mathis' employer and the Wien Employees Federal Credit Union on June 30, 1981.

Finally, on July 29, 1981, as a result of the levy on her husband's salary, Mrs. Mathis called our office. She stated she knew the liability was a result of an audit examination deficiency but that she now had all the receipts to verify their deductions. Mrs. Mathis was told that if she would bring all the receipts into the office, they would be evaluated. However, the levy would not be released until the Service could make a determination.

The Service received two levy checks from Mr. Mathis' employer for $1,248.39 and $966.39, leaving a balance due on the 1977 return of $143.78. The Service did not serve a levy on the State of Alaska for either taxpayer's refund nor did we serve a levy on any bank other than the credit union mentioned above.

NOTE: The taxpayer signed a waiver to disclose return information for tax year 1977.

CASE REGARDING NORMAN S. McPHEE

WITNESS: Norman S. McPhee

TESTIMONY REFERENCE: Page 295 (August 6, 1981).

ISSUE: Requirements for bank deposits of three days for payroll taxes are unrealistic for companies in the bush areas of Alaska. Although penalties are abated, paperwork created each quarter is costly and time-consuming.

RESPONSE: The three banking day deposit requirement for an accumulated liability of $3,000 or more is imposed by regulations. The IRS Collection activity has no discretion in the application of these regulations.

We recognize that some remote communities in Alaska must rely on the airlines or the U.S. mail for their banking. Because they cannot always meet their deposit requirements timely, we provide for abatement of penalties when reasonable cause can be shown. If an employer responds to the first notice with a valid reason for late filing, we will generally abate the penalty.

Mr. McPhee has identified a problem which needs to be addressed. We will review our procedures in this area to see if some alternative can be found which does not require assertion and subsequent abatement of penalties.

NOTE: The taxpayer did not sign a waiver to disclose return information.

CASE REGARDING WILLIAM A. MATHWIG

WITNESS: William A. Mathwig

TESTIMONY REFERENCE: Page 301 (August 6, 1981).

ISSUE: The taxpayer stated that a refund of $18.74 for excess paid on aircraft use tax had not been forwarded by the Internal Revenue Service. Also, a $60.00 error on a 1980 return resulted in a penalty of $44 and interest of less than $2.

RESPONSE: The taxpayer's waiver covered only the tax year ending on July 1, 1980. As a result, the Service is unable, in view of IRC 6103, to comment on Mr. Mathwig's tax matters relating to the tax period beginning July 1, 1980, or the tax period ending December 31, 1980.

NOTE: The taxpayer signed a waiver to disclose return information for the tax year ending July 1, 1980.

CASE REGARDING ELDER LEBERT

WITNESS: Elder Lebert

TESTIMONY REFERENCE: Page 304 (August 6, 1981).

ISSUE: The witness believes the IRS is harassing him by examining his 1977, 1978, and 1979 tax returns.

RESPONSE: Mr. Lebert is being examined for the years 1977-1979. The major issue on his tax return is his charitable contributions and/or other deductions relating to the Universal Life Church and a related entity called the Church of Golden Rule which he established. Because the same issues appear on each of Mr. Lebert's tax returns for the years in question, it is necessary for IRS to examine each of them.

As more fully explained in our response to Mr. Valiente's testimony, the examination focuses on whether the contributions shown on the return satisfy the deductibility requirements of IRC 170 (the contribution was paid during the tax year to a church organized and operated exclusively for religious purposes and that no income inured to the private benefit of a person). The examination will not consider the tax-exempt status of the Universal Life Church of Modesto, the Church's religious beliefs or activities, or the church's right to ordain ministers.

IRS attempted numerous times to obtain from Mr. Lebert the information necessary to complete the examinations. Mr. Lebert refused to cooperate in supplying this information. Mr. Lebert has also made verbal threats and used abusive language when dealing with IRS employees.

IRS' only recourse to obtain the required records was to contact third parties and issue summonses for bank account information. We are awaiting the receipt of these records to complete the examination.

NOTE: Mr. Lebert signed a waiver authorizing IRS to disclose tax return information for years 1977 through 1979.

CASE REGARDING DONALD PORTER

WITNESS: Donald Porter

TESTIMONY REFERENCE: Page 308 (August 6, 1981).

ISSUE: The taxpayer stated that IRS levied on 100 percent of his wages for five months; that he did not owe any money and reported the matter to IRS Inspection; that the money taken by levy was returned; and that notices of lien indicated he was delinquent and did not reflect the fact they were released because of an IRS error—thus marring his credit rating.

RESPONSE: In July 1978 our Fairbanks office received a Taxpayer Delinquent Account (TDA) indicating that Mr. Porter's individual income tax account for 1975 was underpaid by $12,010.90. Prior to receipt of the case in the Fairbanks office, Mr. Porter had been sent four computer notices and the Collection Office function had attempted to contact him by telephone. Since we received no response, a Federal tax lien was filed on June 23, 1978.

Mr. Porter was personally contacted on August 17, 1978, at his place of employment. He told the revenue officer that he received a notice from the service center about not filing his individual income tax return, so he sent his wage statements (W-2's) in by mail. He further stated that he had expected a $3,000 refund, but received a billing instead. Mr. Porter told the revenue officer that he had not filed a 1976 or 1977 income tax return because he wanted to prove that the IRS was harassing him. He said that he was involved in a grand jury investigation of the Secretary of Labor and illegal activities in the carpenters union and he concluded that contact by IRS was retribution for that involvement.

The revenue officer asked Mr. Porter to bring his records into the office, and he would be assisted in filing the delinquent returns. He was also advised to bring in copies of his Forms W-2 for 1975 so that his deficiency could be reviewed and adjusted if appropriate.

Mr. Porter subsequently came into the office but stated that he would not give any information until he was through with the grand jury investigation.

In view of Mr. Porter's failure to cooperate with us, a notice of levy was then placed on his wages. On August 29, 1978, the Service received a check for $496.83 which was applied to the 1975 deficiency. A second check from his employer was received on November 13, 1978, for $516.43 which was also applied to the 1975 deficiency. Service records show that levy action encompassed only the August 29 and November 13 paychecks, not paychecks for five months as stated by the taxpayer.

Mr. Porter contacted Inspection in early 1979. They referred his complaint to the Ogden Service Center where it was processed as a claim. The original assessment arose because he asked the service center to compute his tax. Based on the information he gave them, they determined he wanted to file as married filing separately. One of the W-2's he supplied to the service center looked as though his gross wages were $38,856.71 when in fact they were $30,856.71. When Mr. Porter finally provided the correct information, (i.e., filing status should be joint and wages were $8,000 less than previously determined), the tax was reduced from $20,814.38 to $11,191.00 and a refund was issued based on his credits for withholding and levy amounts.

Mr. Porter takes exception to the wording on the release of Federal tax lien which states in part, ". . . I certify that as to the following named taxpayer, the requirements of Section 6325(a) of the Internal Revenue Code have been satisfied for taxes listed below and for all statutory additions". Mr. Porter feels that the term "satisfied" implies that he paid the tax, when in fact he never owed it.

A credit check of an individual with a history of a tax lien may reflect negatively on his credit rating. Had Mr. Porter cooperated with the Service, he could have avoided filing of the Federal tax lien. IRS followed standard procedures when the lien was filed. That lien accurately reflected Mr. Porter's tax situation at the time.

NOTE: The taxpayer signed a waiver to disclose return information for tax years 1975 through 1979.

CASE REGARDING JAMES LUNDGREN

WITNESS: James Lundgren
TESTIMONY REFERENCE: Page 316 (August 6, 1981).
ISSUE: The IRS requested information in 10 days from the taxpayer but took 60 days after the receipt of the information before replying.

The taxpayer's credits were not included in the final report. Subsequent audits of taxpayer's secretary and relatives' returns may have been conducted because of his complaint about the IRS.

RESPONSE: Mr. Lundgren's tax situation is somewhat more complex than as outlined in his testimony. In July 1980, an examination report was issued that reflected a proposed tax deficiency for 1976 in the amount of $25,990 and a refund for 1977 of $4,633. The taxpayer agreed to the findings and the case was closed in early August. In December 1980, the taxpayer received a bill for the additional 1976 taxes and a refund of his 1977 taxes.

In September 1980, after agreeing to the 1976 and 1977 audit results and before receiving a bill or refund, the taxpayer filed an amended 1976 return claiming an overpayment of $19,289. The 1976 amended return reflected the carryback of a 1978 net operating loss and the July 1980 audit adjustments. The taxpayer inquired about this refund in January 1981. The amended 1976 return was assigned for examination and in April 1981 the examiner met with the taxpayer and his representative to audit the claim for refund. On April 28, 1981, the taxpayer signed an audit report reflecting the agreed upon adjustments and a refund was issued on July 23, 1981.

The examiner, during the examination of the 1976 and 1977 returns, should have inspected the taxpayer's retained copy of any subsequent years' returns. Had that been done, the examiner would have been aware of the subsequent year losses and their potential impact on the returns under examination. Due to the examiner's procedural error in failing to take this step, the taxpayer was forced into unnecessary time delays and contacts with the Service.

NOTE: This response is limited to the tax periods 1976 and 1977 and the taxpayer's covered by the waiver provided.

CASE REGARDING MARY CANNON

WITNESS: Mary Cannon
TESTIMONY REFERENCE: Page 324 (August 6, 1981).
ISSUE: The taxpayer stated that IRS assessed her with $600 tax on her ex-husband's retirement income omitted on their joint return. As a result, IRS levied on her state refund.

RESPONSE: The waiver submitted by the taxpayer does not include the tax years. The Service, therefore, is unable, in view of IRC 6103, to comment on her tax matters.

However, IRC 6013(d)(3) states, "if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several." The IRS is required to pursue the collection of tax liabilities from each joint filer regardless of present marital status.

NOTE: The taxpayer signed a waiver to disclose return information, but failed to indicate the tax years.

CASE REGARDING H. DEAN FARRIS

WITNESS: H. Dean Farris
TESTIMONY REFERENCE: Page 327 (August 6, 1981).
ISSUE: The taxpayer stated that interest of $48.17 was incorrectly recorded by IRS as $4,800.17 on his 1976 individual income tax return. The tax was increased and

collection notices, including a final notice before seizure, were issued. The IRS classified the taxpayer as an illegal tax protester and issued a summons for 1977 and 1978 records.

RESPONSE: For tax year 1976 Mr. Farris filed a protest return, claiming that income received by him is not reportable since the Federal Reserve Note is not legal tender. He did not report wages on the return, but did attach Form W-2. When service center personnel processed the returns they picked up the wage amount from his Form W-2 and corrected the erroneous withholding amount of $330,880.00 by entering the amount from the W-2—$3,308.00. Mr. Farris' return clearly showed $4,800.17 as interest income. Service center personnel did not change this entry since there were no attachments indicating the entry was incorrect.

Once the return was corrected the taxpayer was sent two notices over a two month period. Both notices contained appeal rights and the second notice indicated that the corrected tax liability would be assessed unless there was an appeal within 90 days. When the taxpayer did not respond, the tax was assessed.

Mr. Farris had approximately five months from the date of first contact to appeal the corrections made to his return. He did not appeal and subsequently his sole challenge in testimony before the subcommittee was the interest income of $4,800.17, which is the only figure the service center did not change when his return was processed.

After the assessment was made, Mr. Farris was sent four deficiency notices by the Ogden Service Center. When he did not respond to the notices, the account was transferred to the Fairbanks office for collection. Mr. Farris was first contacted by a revenue officer on January 10, 1979, at which time he refused to give any information. He said that he had not worked since February 1978 and had no income. He also stated that the Service could not seize anything of his because he refused to give his consent and he would not honor a writ of entry.

In April 1979, Mr. Farris appeared at the Fairbanks office of the Internal Revenue Service accompanied by three unknown individuals. He said that he just came in to tell us that he refused to pay and that if we seized anything he would sue us. He later sent a certified letter stating that he was not a person required to pay tax and demanded a refund of all his taxes since 1961. From April through August 1979, the Service attempted to locate assets with which to satisfy the tax liability. On August 17, 1979, the taxpayer was in the office of Internal Revenue Service, again accompanied by three individuals. At that time he reiterated his refusal to pay, and stated that, if there was a confrontation, IRS would come out on the losing end. He also said that if we tried to take anything of his, he would protect it.

The revenue officer concluded that Mr. Farris was serious in his threats and filed a threat of assault report with the Regional Inspector of the Internal Revenue Service.

Mr. Farris has not filed income tax returns for 1977, 1978, 1979, or 1980. Mr. Farris has been totally uncooperative, belligerent, and threatening. His position is that he is not a person required to pay taxes, that to file a Federal income tax return violates his rights, and that a Federal Reserve Note is not legal tender.

Prior to his testimony, our records indicate that at no time did Mr. Farris attempt to clarify with IRS that his interest income entry on his tax return was erroneous or that the interest payment to him came from IRS. Consequently, IRS had no basis for adjusting the assessment made to his return.

NOTE: The taxpayer signed a waiver to disclose return information for any tax year.

CASE REGARDING DR. JAMES LUNDQUIST

WITNESS: Dr. James Lundquist

TESTIMONY REFERENCE: Page 333 (August 6, 1981).

ISSUE: The IRS erroneously cashed a check made payable to the State of Alaska for the taxpayer's 1959 state income tax. The credit was not posted to the taxpayer's account because the original cancelled check provided by the taxpayer to the IRS was lost by the IRS.

The taxpayer was assessed $82,000 for 1974 through 1976 due to examination adjustments to a partnership from which he had withdrawn in 1974.

Repetitive audits involving the taxpayer resulted in very little, if any, change in tax liability. Additionally, two audits were made of the taxpayer's 1978 return and that if he wished to present arguments concerning the second audit he had to sign a waiver.

RESPONSE: Dr. Lundquist is a physician in the Fairbanks area. Transcripts of his account (for the tax years covered by the waiver received) indicated the following:

Year	Audited	Tax paid	Agreed overassessment (refunded)	Unagreed deficiency (partnership adjustments)
1974	Yes	$24,093	($11,353.37)	
1975	No	34,998		
1976	No	57,947		
1977	No	15,634		
1978	Yes	3,869	(217.00)	$1,774
1979	Yes	2,820		1,689

The taxpayer stated that he was assessed $82,000 for the years 1974-1976 because of an examination of a partnership from which he had withdrawn in 1974. We cannot identify, in any way, an assessment of $82,000 arising from an examination of his 1974-1976 returns or those of the partnership. A review of the transcripts of the account (see summary presented above) revealed that an audit of his 1974 return resulted in a refund of $11,353.37, and that he was not examined for the year 1975 or 1976. The transcript also shows that no examination of his 1977 return was made.

The 1978 return was selected for examination and the audit resulted in an agreed tax refund of $217.00. After completing the examination of the taxpayer's 1978 individual return, a separate audit of the Central Office Building partnership was completed for the years 1978 and 1979. The examination resulted in "unagreed" audit adjustments for both years, the net effect of which caused an increase in the partnership income. Dr. Lundquist's share of the partnership changes were later reflected as audit adjustments to his 1978 and 1979 returns. (The taxpayer's share of the partnership adjustments which flowed to the taxpayer's 1978 return did not constitute a reexamination of the return or a second inspection of the taxpayer's books and records. Accordingly, written notification to the taxpayer, under section 7605(b) of the Code, that an additional inspection of the taxpayer's books of account is necessary, is not required to be made.)

The unagreed issue on both the 1978 and 1979 partnership returns, was the correct amount of depreciation allowable on a building. The taxpayer stated that the IRS was proposing an 80-year life on a building which the partnership claimed a composite life of 18.7 years. IRS engineers determined the correct composite life of the building to be 36.6 years with none of the individual components of the building exceeding 60 years. Therefore, depreciation was recomputed using a 36.6 year life.

The "waiver" referred to by Dr. Lundquist, with respect to the year 1978, appears to be an agreement extending the statute of limitations for 1978. Such an agreement would be necessary in order to allow sufficient time for the taxpayer and IRS to process the case through the administrative appeals process.

The Service has no records going back as far as 1959 and cannot speak to any error that we may have made in that year.

NOTE: This response is limited to the tax periods 1974 through 1980 as covered by the taxpayer's waiver.

CASE REGARDING MERLYN SCHUSTER

WITNESS: Merlyn Schuster
TESTIMONY REFERENCE: Page 339 (August 6, 1981).

ISSUE: The IRS disallowed the taxpayer's 1972 travel expenses as an educational expense deduction even though college credit was received and a letter from the superintendent of schools supported the purpose of the travel. The taxpayer believes tax cases should be heard by an impartial judicial body.

RESPONSE: Mr. Schuster's concerns relate to a technical determination made on an examination of his 1972 income tax return. (The case file on such an old examination is not readily available.) In general, the granting of college credit and/or a letter provided by a teacher's superintendent are not, standing alone, totally sufficient to support travel expenses related to educational pursuits. First, it must be established that the travel expense incurred is required for the educational pursuit and not primarily personal in nature; second, the actual amount of such expense must be substantiated. Failure to comply with the rules under either or both of the above requirements can result in a disallowance of taxpayer's travel expenses as an educational expense deduction.

Further, Mr. Schuster stated that tax cases should be heard by an impartial judicial body outside of the IRS. A taxpayer who disagrees with the examiner's findings, can request a conference in Appeals. While Appeals is a part of IRS, Appeals personnel are under different supervision and management than the examiner. Many tax controversies are settled at this level. In the event agreement cannot be reached in Appeals, a taxpayer may petition the Tax Court. The Tax Court is not a part of the Service; it is a part of the court system. For cases involving smaller sums of tax, the taxpayer can request that the Tax Court handle the case under "S case" procedures. Such cases are handled more simply and less formally than regular Tax Court cases.

NOTE: The taxpayer has signed a waiver to permit disclosure of return information for the tax period 1972.

CASE REGARDING BOBBY MANTOYA

WITNESS: Bobby Mantoya
TESTIMONY REFERENCE: Page 346 (August 6, 1981).
ISSUE: The taxpayer has been subjected to repetitive audits.

The IRS has asked the taxpayer for additional records. However, the taxpayer stated that he has provided all the records concerning the audit.

The IRS would not allow the taxpayer to claim checks written out to his band as business expenses.

RESPONSE: The taxpayer states that he has been subjected to repetitive audits for the years 1976, 1977, 1978, 1979, and 1980. The taxpayer's transcripts of account indicate that for the years 1976 through 1980, only the years 1978 and 1979 are under examination.

During these examinations, the taxpayer was asked to furnish his books and records for both 1978 and 1979. However, he supplied only the records concerning his 1978 tax return. A review of the taxpayer's 1978 records disclosed that he was depositing in his bank account gross earnings, from a band he had formed. He then wrote many checks to cash (approximately $41,000) and reported that these funds were used to pay the band. However, no Forms W-2 or 1099 were issued to the band members and the taxpayer was unable to verify that he had, in fact, paid the band in cash.

A bank deposit analysis was done for the year 1978 and resulted in unexplained deposits in excess of $42,000. Due to the unexplained deposits and the fact that the IRS does not have Mr. Mantoya's 1979 records, a third-party summons was issued to the bank where the taxpayer maintains his account for the taxpayer's 1978 and 1979 bank records. To date, that summons has not been enforced and the examination remains incomplete.

NOTE: This response is limited to the tax periods 1976 through 1980 as covered by the waiver to disclose return information signed by the taxpayer.

CASE REGARDING STEPHEN AND MONA OLIVER

WITNESS: Stephen and Mona Oliver
TESTIMONY REFERENCE: Page 349 (August 6, 1981).
ISSUE: The taxpayers stated that their 1976 individual income tax return was not accepted as a return due to their refusal to answer certain questions because of Consitutional issues. The taxpayers also stated that IRS contacted the State of Alaska to advise the State of an appointment between the Olivers and the Internal Revenue Service, resulting in the arrest of Stephen Oliver by state troopers on Alaska income tax charges. They indicated that IRS levied on wages and an automobile was seized which resulted in personal abuse.
RESPONSE: For tax year 1976, Stephen M. and Mona L. Oliver sent in a return on which they claimed an inability to answer questions because it would violate their rights under the Fifth Amendment to the Constitution. Based on W-2's attached to their return, an assessment of tax, penalty and interest in the amount of $9,591.09 was made against the Olivers for which final notice and demand was made in November 1978. In accordance with the Internal Revenue Code, when a taxpayer neglects or fails to pay the assessed tax within 10 days after notice and demand, a levy may be made on all property and rights to property.

The revenue officer assigned to collect the assessment personally contacted the taxpayers in February 1979 at which time they refused to pay the tax or to provide a financial statement. They refused to talk about payments asserting that the tax was illegal and not due. They were provided with Publication 586-A, The Collection Process for Income Tax Accounts, and advised that a Federal tax lien would be filed. On February 22, 1979, a Notice of Federal Tax Lien was filed. Also, in February 1979 a Notice of Levy was served on Stephen Oliver's wages at Pacific Alaska Airlines where he worked as a pilot. Two levy checks were received before he was furloughed by the airline.

A meeting had been scheduled with the taxpayers for April 2, 1979. This meeting was cancelled because the revenue officer was on a training assignment. The meeting was rescheduled for April 5, 1979. When the taxpayers arrived on that date, they were arrested by state troopers on a bench warrant for failure to comply with a summons issued by the State Department of Revenue. On April 4, prior to the above arrest action, the investigating revenue officer, following established procedures for securing addresses, went to the state troopers' headquarters to find a valid address for the Olivers. At that time, the revenue officer was advised that the state troopers were also attempting to locate Mr. Oliver as they had a warrant for his arrest. The revenue officer advised the troopers that the Olivers had an appointment with the IRS the following morning.

On the morning of the arrest, one of the troopers called a special agent of the Internal Revenue Service in the Fairbanks office and asked him to identify the Olivers when they arrived at the Federal Building. The special agent agreed to do this and was present when Mr. Oliver was arrested. Mr. Oliver subsequently spent 45 days in the Fairbanks jail. During this time, the revenue officer and his group manager visted the taxpayer. He refused to discuss his tax liability with them. Mr. Oliver was advised that the Service had no alternative but to initiate enforcement action to collect the delinquent taxes.

Records of the Alaska State Department of Motor Vehicles indicated that the taxpayers owned several vehicles including a 1970 Volkswagen. On August 1, 1979, the vehicle was parked on a public street in front of the Federal Building in Fairbanks, Alaska. Verbal approval to seize the vehicle was received from the acting group manager. In discussing the seizure, consideration was given to the possibility of a confrontation, but IRS decided to proceed because:

1. All previous attempts to locate the vehicle had been unsuccessful;
2. No matter when the seizure was made, there would likely be a confrontation because the taxpayers were known to be active tax protesters;
3. The vehicle was located in front of the Federal Building where there would be ample security personnel in the event of a confrontation.

At approximately 11:00 a.m. on August 1, 1979, the revenue officer placed a seizure tag on the vehicle. Official seizure notices were exhibited and a tow truck was called. At that time, the taxpayers were believed to be inside the Federal Building. They subsequently appeared and were presented with the seizure notices and notified that the vehicle was seized by IRS for delinquent taxes. They ignored the forms, as well as a demand for payment. They were accompanied by a group of eight to ten people, including known tax protesters. Mrs. Oliver requested permission to remove some personal belongings which were locked in the car. When permission was given, the taxpayers occupied the vehicle by entering and locking the doors. At this time, both taxpayers were being urged on by the crowd. In view of the forcible rescue of seized property, in accordance with IRS procedures, the Criminal Investigation Division was contacted at approximately 11:30 a.m.

Assistance was requested from the Fairbanks City Police. Two policemen quieted the crowd, but did not remove the taxpayers from the vehicle.

At approximately 2:00 p.m., the U.S. attorney was contacted and he advised the Service personnel to wait and see if the taxpayers could be persuaded to leave the vehicle. The taxpayers said they would leave if a court order was obtained. They stated that IRC 6331, the authority under which the seizure was made, meant nothing to them.

While the U.S. Attorney's position was that the taxpayers could have been removed from the vehicle without a warrant, he decided to get one since the taxpayers had agreed to vacate the car if such a warrant was obtained. Between 5:00 p.m. and 6:00 p.m., the U.S. Attorney obtained a search warrant under IRC 7212(b). The revenue officer telephoned a locksmith to assist in entering the vehicle. The search warrant was displayed to Stephen Oliver by holding it up to the window so it could be read. The taxpayers again refused to leave the vehicle. The locksmith could not open the door as the taxpayers were holding down the locks.

Approximately seven hours after the seizure, when all other efforts had failed, the special agent broke two windows on the driver's side of the vehicle which was occupied by Stephen Oliver. The butterfly window was broken first, anticipating that it would enable the special agent to reach inside and open the door. However, Stephen Oliver was holding the lock down and the agent was unable to open the door. Therefore, he broke the section of the window opposite the lock. As this was being done, Mona Oliver reached across the car and cut a finger on the broken glass. Stephen Oliver then got out of the car. Mona Oliver held on to a handle near the glove box and refused to move. Two special agents removed her by her arms from the car. No injuries other than a cut to her finger were observed.

While the actions taken by IRS personnel were lawful and all procedures then in force were complied with, the forcible removal of the Olivers was a mistake. IRS written procedures have been changed to make it clear that IRS personnel cannot use force except in situations involving their safety or the safety of others.

Stephen and Mona Oliver have not filed personal income tax returns for the years 1978, 1979, and 1980. Two of these years are currently being investigated by our Examination Division and assessments are being proposed.

NOTE: The taxpayers signed waivers to disclose return information for all tax years.

CASE REGARDING PRISCILLA G. PHARR

WITNESS: Priscilla G. Pharr
TESTIMONY REFERENCE: Page 362 (August 6, 1981).

ISSUE: The taxpayer stated that the IRS sent notice of a $2,000 deficiency to her covering a joint liability incurred with her former husband. The taxpayer claimed that the Internal Revenue Service should have first gone to her ex-spouse to collect the deficiency and not asked her to sign a payment agreement.

RESPONSE: The Service cannot locate any open or closed accounts on Priscilla G. Pharr or her former husband for the tax years covered by her waiver. We assume from the testimony that the problem Ms. Pharr refers to happened prior to those years.

Her complaint is centered around the fact that the Service pursued collection of a joint liability from her and not from her ex-husband. The Internal Revenue Code and related regulations hold that each person on a joint return is liable both jointly and severally. Collection procedures require us to attempt collection from either or both spouses.

It is not unusual for a divorce decree to stipulate that the delinquent taxes are to be paid by the husband or the wife; however, Federal law supersedes the divorce decree. In this instance, state law does not remove a person from a Federal tax liability.

NOTE: The taxpayer signed a waiver to disclose return information for the tax years 1976 through 1979.

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